AGENDA

MILWAUKIE CITY COUNCIL
OCTOBER 7, 2003

MILWAUKIE CITY HALL **1919TH MEETING**
10722 SE Main Street

REGULAR SESSION - 6:00 p.m.

I. CALL TO ORDER
Pledge of Allegiance

II. PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS

Disability Awareness Month – Proclamation

III. CONSENT AGENDA *(These items are considered to be routine, and therefore, will not be allotted Council discussion time on the agenda. The items may be passed by the Council in one blanket motion. Any Council member may remove an item from the "Consent" portion of the agenda for discussion or questions by requesting such action prior to consideration of that portion of the agenda.)*

- **A. City Council Minutes of September 2, 15 & 16, 2003**
- **B. Abatement Lien 4201 SE Meadowcrest -- Resolution**
- **C. Abatement Lien 12106 SE 21st Avenue and 2120 SE Bobwhite Street -- Resolution**
- **D. O.L.C.C. Application for Libbies Too, 11094 SE Main Street**

IV. AUDIENCE PARTICIPATION *(The Mayor will call for statements from citizens regarding issues relating to the City. It is the intention that this portion of the agenda shall be limited to items of City business which are properly the object of Council consideration. Persons wishing to speak shall be allowed to do so only after registering on the comment card provided. The Council may limit the time allowed for presentation.)*

V. PUBLIC HEARING *(Public Comment will be allowed on items appearing on this portion of the agenda following a brief staff report presenting the item and action requested. The Mayor may limit testimony.)*

None scheduled.

VI. OTHER BUSINESS *(These items will be presented individually by staff or other appropriate individuals. A synopsis of each item together with a brief statement of the action being requested shall be made by those appearing on behalf of an agenda item.)*

- **A. Electric Lightwave, LLC (ELI) Franchise Agreement – Ordinance (JoAnn Herrigel)**

VI. OTHER BUSINESS, continued

B. Intergovernmental Agreement Allowing Temporary or Long-Term Sharing of Building Inspection Staff with Other Jurisdictions in the Tri-Counties Area – Resolution (Tom Larsen)

C. McLoughlin Boulevard Improvements Project, Intergovernmental Agreement (IGA) for Right-of-Way Acquisition -- Resolution

VII. INFORMATION

A. Ledding Library Board Minutes, August 25, 2003

B. Riverfront Board Minutes, June 16, 2003

VIII. ADJOURNMENT

Public Information

- Executive Session: The Milwaukie City Council will go into Executive Session immediately following adjournment of the regular session. Council will consult with legal counsel regarding real property transactions pursuant to ORS 192.660(h).

  All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions as provided by ORS 192.660(3) but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making and final decision. Executive Sessions are closed to the public.

- For assistance/service per the Americans with Disabilities Act (ADA), please dial TDD 503.786.7555

- The Council requests that all pagers and cell phones be either set on silent mode or turned off during the meeting.

PROCLAMATION

WHEREAS, this Country has prided itself on advancing the civil rights of individuals and central to that philosophy are the precepts of equality, individual dignity and self reliance; and

WHEREAS, in keeping with that tradition, the U.S. Congress, in 1990, enacted the Americans with Disabilities Act, landmark legislation prohibiting discrimination against people with disabilities in employment, public accommodations, transportation and telecommunications; and

WHEREAS, October has been designated by Congressional Resolution as "National Disability Awareness Month": and, by way of this proclamation, the City of Milwaukie supports this Congressional Resolution as well as the spirit and letter of the law to assure that all citizens with disabilities are fully included in our social, cultural and economic mainstream.

NOW, THEREFORE, be it resolved that I, James Bernard, Mayor of the City of Milwaukie, Oregon, do hereby proclaim the month of October as

DISABILITY EMPLOYMENT AWARENESS MONTH

In the City of Milwaukie and ask all our citizens to join us in its observance.

_____
James Bernard, Mayor

ATTEST:

_____
Pat DuVal, City Recorder

MINUTES

MILWAUKIE CITY COUNCIL WORK SESSION
SEPTEMBER 2, 2003

Mayor Bernard called the work session to order at 7:10 p.m. in the City Hall conference room.

Councilors present: Barnes, Lancaster, Loomis, and Stone.

Staff present: City Manager Mike Swanson.

Mayor/Council Communications Agreements

Swanson discussed the previous Council's communications agreement that was done about three years ago. He felt there were two important points:

1. Why do we do these? Communications agreements ensure Council meetings are conducted in the clearest, most open, and most orderly manner possible to best inform the public; and
2. Communications agreements ensure that meetings focus on the issue(s) before Council and not on matters that are extraneous to it.

Council members had no additional points.

Swanson introduced his communication rules for this session:

1. Focus on solutions/results namely communication agreements, and not on rehashing the past;
2. Discuss ideas/principles and not get into wordsmithing;
3. Respect; do not interrupt; no side conversations; and
4. Have conversation only among council members.

He went through each point of the existing communications agreement to consider the substance and not the words.

1. I am respectful of councilors, citizens, and others appearing before us and staff.

- Councilor Lancaster, if wordsmithing, "Councilors and all appearing before us."
- Councilor Stone, if wordsmithing, "I am respectful of Councilors, staff, citizens and others appearing before the Council."
- General approval.

2. **I am respectful of all thoughts and ideas. I clarify facts and opinions to ensure understanding. I stay focused and fully participate until the issue is resolved.**
    - Councilor Stone suggested making it three separate ideas. She finds the agreement well thought out and thorough.
    - Swanson saw ways to simplify the ideas, which he finds good.
    - No one identified any missing elements.

3. **In all discussion I present my views in a positive and forthright manner, respond to questions clearly and directly, and maintain the focus of the discussion. I will not personalize my comments, and in matters of opinion, I will speak only for myself.**
    - General acceptance.

4. **Before taking a public position on City matters, I notify the group of my position, and I provide reasonable advanced notice of matters I am introducing at meetings.**
    - Mayor Bernard said he has difficulty with this one but is working on communicating better with Councilors on upcoming issues. Sometimes it is not always possible to communicate with the Council when a decision is just a few minutes away. When he is faced with that kind situation, he states he is voting as the Milwaukie Mayor and not for the entire City Council. He would add "when possible."
    - Swanson sees this element as frequently causing problems. There are a couple of things that happen. One is failure to come back and notify the group right away. If a person is a member of a regional policy group, it may be impossible to talk to the other council members before taking a position. It is good, though, to disclose to the policy group that the issue has not been discussed with the Council. If this happens, it is imperative that the council member notifies the others as soon as possible. Second is to let other Councilors know if something is going to come up at a meeting to prevent a descent into chaos and acrimony. This would be called the "No Surprises Rule." In his position he would rather think disaster might occur and not have it occur than to not know and have it occur. It is just a matter of saying, "I am going to bring this issue up tonight." This includes Council and staff. He appreciates having a chance to research issues, so they can be dealt with immediately rather than postponing the answer to a later meeting.
    - Councilor Stone suggested it might be clarified by saying, "when possible before taking a public position on City matters." She did like the idea of the individual's disclosing he/she does not have the consensus of the Council. She thought the other piece, providing advanced notice, could be separate.
    - Councilor Lancaster said there are two issues both of which speak to intent. The first issue is taking a position that represents the Council

when it should not. He has no problem at anytime with someone's taking a position publicly as long as he/she is not attempting to make it seem to be a Council view.

- Mayor Bernard discussed how the press can distort some votes.
- Councilor Lancaster thinks it is worse for the Mayor, in his opinion, because he/she is the City representative. There is an inference that what the Mayor says represents the City of Milwaukie, thus making disclosure by the Mayor even more important. It is not so much about the Council as individuals but as how this body should be conducting itself. The second portion of point number 4 is purposely dropping a bombshell on the rest of the group for effect or personal gain. Issues may suddenly emerge and need to be acknowledged.
- Swanson said it is as simple as no one wants to be caught by surprise. No one wants to look like he/she does not know what is happening. To the extent possible, it is nice to ensure others are not complicit in making you look like you do not know what is going on.
- Councilor Lancaster added there is an inherent trap by the nature of the work the Council does. He is amazed in the number of people who ask questions about something that is going on in the City and are disappointed when he does nothave an answer.

5. I work toward consensus and accept the collective decision-making process of the group. If I disagree with a decision of the group, I respect and accept that decision.

- Swanson believes it says, once a decision is made, it is not the function of any member of the group to go out and dis the group. It is okay to say one does not agree with a decision but let the group move on. It should not be the basis for creating discord for everything that happens from that point forward.
- Councilor Lancaster explained at one point there was a councilor who used this method to try and reverse a Council decision that could not possibly have had a positive outcome.
- Mayor Bernard added sometimes a person has to walk away, calm down, and think it over. Remember that I am part of the group and that is the group's decision.
- Councilor Lancaster said the winner/loser mentality is prevalent, but that is not what democracy is about. It is about everyone's opinions being heard. Democracy is messy, and there will always be a certain number of people who are not happy with a decision. The only way a society can progress is to move forward in an orderly manner with the decisions that have been made. It is all right if one wants to constructively raise the consciousness of others to come to a different outcome at some point in the future. It is not all right to target a decision made for one's own personal gratification.
- Councilor Loomis said when faced with that, he just feels it is his opinion. He has never looked negatively on fellow councilors when a

vote did not go his way. He respects other's opinions as being as valid as his own.

6. **I look for ways to positively praise efforts and accomplishments. If issues or concerns arise between team members. I first attempt to resolve such matters by addressing the issue in an appropriate, private, and timely manner.**
    - Councilor Barnes feels e-mail is the best way to accomplish this. She feels it is important to find a way to encourage the use of e-mail, and that is the challenge before this group. Problems can be solved by an ongoing dialogue. She would like to see that incorporated in the communications agreement, perhaps in this area. She understands from the city attorney that policy decisions are not being made via e-mail since it is more a matter of seeking clarification and asking questions.
    - Swanson said the entire inventory of e-mail messages is maintained on the server. One of the best ways to deal with potential public records issues is to place a one-on-one call. E-mail, even though it could be argued one-on-one e-mail is not a public record, is still on the server and retained for a period of time. Council members may use their personal e-mail for one-on-one discussions.
    - Councilor Loomis would rather discuss issues person-to-person because there can be too much misunderstanding in e-mail. It is good for providing information.
    - Councilor Lancaster said e-mails can be very one dimensional and agreed face-to-face is preferable. Not much progress will be made if one stops dialogue with e-mail.
    - Councilor Stone said Lancaster has a good point about the second part. It is clearly not aimed at a Council issue; it would be an issue between two members. She believes a phone call is the better route with face-to-face conversation being the best. That, however, is sometimes difficult. She believes this one could be split because the second clearly deals with conflict resolution. A phone call is like driving a car and having road rage against someone. If you are without your car or without your phone, you might have a different meeting and conversation. It tends to take away some barriers that could interrupt communication. In the sentence about praising efforts, Stone suggested adding "of fellow Council members, staff, and any who come before us in meetings." She would make the other part a separate agreement and perhaps clarify the preferable route for conflict resolution.
    - Councilor Lancaster would not restrict the form of communication. He prefers face-to-face, but there may be other issues that can effectively be dealt with via e-mail.
    - Swanson said there could be several approaches and certain methods work best with some while not with others.

7. **I engage the community in a shared dialogue in order to fulfill my responsibility to make decisions that serve the best interests of the community.**
    - Councilor Lancaster said part of what this agreement was getting to was personal agendas that did not move the Council forward on community goals. One person's goals may have been moved forward. The intent was to focus on community goals and not on individuals.
    - Councilor Barnes believed the Council had to be out in the public to share dialogue and urged Council members to make a commitment to attend neighborhood association meetings and picnics and other City functions. She would like to see a renewed emphasis to do that in order to help Council make better decisions.
    - Mayor Bernard agreed with Barnes's interpretation and agreed it is important to visit neighborhood meetings.
    - Councilor Stone said at the end of that she would add "and make decisions that serve the best interests of this community while supporting community goals."
    - Mayor Bernard was not sure he agreed with that statement. Council is out there listening to what people are saying, and things change rapidly. Usually discussions are not about big issues but things that touch people's daily lives like potholes and streetlights. He cannot remember a time he talked about community goals with the possible exceptions of the riverfront and Safeway.
    - Councilor Stone asked how the community goals were identified.
    - Councilor Lancaster said the City went through a very comprehensive community process. The neighborhoods were very involved during this 9-month process, and there were a lot of public meetings. The neighborhood goals and visions shaped the community goals. The core values and desires have not changed much and some, in fact, have been accomplished. He cautioned against the tendency to become very specific in this agreement. He feels it is important to view these points as a framework in which to operate.
    - Swanson said the challenge would be to somehow construct the agreement in such a way that it is memorable without having to refer to a piece of paper. It should be crafted in such a way that it is integrated into what we do and becomes a part if us.

8. **I communicate with staff to gather information and to cultivate ideas. I do not give direction except through the city manager after agreement with the council.**
    - Mayor Bernard found it amazing that he can walk into a department and mention something, and in a short time it is done.
    - Councilor Loomis said it is important for Councilors to remember their positions when they are talking to staff.

- Swanson said the first sentence is important. This organization is an open system and there is no wall between the Council and staff. This is by choice for more effective decision-making.
- Councilor Stone referred to the second sentence and said not every issue needs to go through Council to give direction to the city manager.
- Swanson briefly discussed a recent building permit issue Loomis brought to his attention. He did not bring it to the rest of Council. There are issues he will look into and will end up informing the rest of Council because it may be of citywide concern. It depends on the issue; everything a Council member asks does not necessarily go to the others.
- Councilor Lancaster said this brings up the question of whether this is being drafted for this group or is it considered a timeless foundation of how the Council should operate. The Council has a good relationship with this City Manager, but it may not be the same in the future. The interesting differentiation from a technical standpoint is that the City Council creates policy and the city manager carries it out. Outside of policy issues, the Council has no directive authority; that is the city manager's job. Currently, that line is blurred because of the council/city manager relationship. Is this agreement just for us, or is it a longer-lasting framework?
- Councilor Stone sees these as guiding principles. She would wordsmith and say "I give direction through the city manager and/or after agreement with the Council" to clarify that not everything needs to come to Council.
- Swanson wished he could capture what it is that we do because there is a profession out there that is set in its ways. The lines are blurred, but it is by a mutual agreement to make things happen and to work. He was not sure how that can be articulated.
- Councilor Stone suggested, "I give direction to staff through the city manager" because that is who the Council would be directing.
- Councilor Lancaster discussed how a Councilor feels like an average person but is not perceived that way by staff or citizens.
- Swanson said here it is bypassing an unnecessary bureaucratic step.

Swanson will draft an updated and simplified agreement based on this discussion.

Councilor Barnes asked what the Council would do if a member perceived that some part of this agreement had been violated.

Swanson said the rule is to do something privately initially. Then the question is whether to try to do something one-on-one, and Swanson indicated he would become involved if asked. The only way to deal with it is to say, "We have these

agreements, and the allegation is they have been violated." Hopefully it can be resolved in that part of the process.

Councilor Stone said in the interest of saving the City money, it is her preference to take it up together, one-on-one. If it cannot be resolved, that is when a third party is brought in for conflict resolution. It speaks to the maturity level because it is hard to confront others. No one is born with that talent, and we all have to struggle through it. She would not involve Swanson unless she found the individuals could not resolve the situation.

Councilor Loomis has seen these rules violated while on Council but not intentionally. Sometimes Councilors seem to take things personally, and most members are respectful of each other.

Councilor Lancaster believes the over-riding principle is intent. If it is not done intentionally, there should be no harm in respectfully bringing issues to someone's attention.

Councilor Loomis commented even small things can become an issue and grow.

Swanson said Lancaster's point on intent is an important issue. What is the intent?

The work session adjourned at 8:10 p.m.

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Pat DuVal, Recorder

MINUTES

MILWAUKIE CITY COUNCIL WORK SESSION
SEPTEMBER 15, 2003

Mayor Bernard called the work session to order at 5:30 p.m. in the City Hall conference room.

Councilors present: Barnes, Lancaster, Loomis, and Stone.

Staff present: City Manager Mike Swanson and Alice Rouyer Community Development and Public Works Director.

Information Sharing

1. **Councilor Barnes** attended the first meeting of the Milwaukie Civic Community Theatre Group and announced Sabin/Schellenberg is interested in doing a semiannual dinner theatre. The planning group is researching the feasibility of doing something in the downtown area.

2. **Swanson** will attend a Clackamas County Board of Commissioners meeting to explain and seek support for the North Main Project vertical tax abatement. The Board of County Commissioners is the governing body for the North Clackamas Parks and Recreation District (NCPRD), and at a recent meeting, three members of the NCPRD Board voted to opt out. Swanson provided the Council with a copy of his report to the Commissioners in which he explains the tax abatement.

3. **Swanson** received a question from Councilor Loomis regarding the proposed water rate increase and how the Council might reconsider the sanitary sewer volume rate adopted in July. If the Council wishes to discuss these rates together, he suggested Council could pass a motion at the regular session that postpones consideration of the water rate to a date certain and at which time the sewer rate could be reconsidered.

   Councilor Loomis understands the utilities operate independently, but staff did present an option that would lower the sanitary sewer volume rate. He is concerned about increasing both rates.

   Mayor Bernard pointed out the City did get a $1 million bill from the County for wastewater treatment facility improvements. He would be in favor of holding the adopted rates until that bill is paid.

   Rouyer said the City signed a 10-year payment agreement with the County, but, with the current revenue stream, she anticipates it can be paid off in 3 to 5 years.

Mayor Bernard said the other issue to keep in mind is how much it will cost to decommission the Kellogg Treatment Plant.

Swanson said the argument on the parts of some cities and perhaps the unincorporated areas is that decommissioning the plant will benefit Milwaukie. They may want to know how much Milwaukie is willing to contribute to making that happen. He in turn would argue that Milwaukie has lived with a devaluation of its property because of the Kellogg facility.

Councilor Lancaster believes it is important to remember to focus on the future and the goal of moving the treatment plant. The region is targeting growth to this area. Over a relatively short period of time the wastewater treatment costs will go back down, and we would be millions of dollars ahead locally.

There was Council consensus to set the water rate hearing over to a date certain and to also reconsider the sanitary sewer rates at that time.

4. **Mayor Bernard** said he would propose a resolution opposing the formation of an Electrical People's Utility District (PUD) in Yamhill County at the regular session.

   Councilor Loomis said he felt the other side should be able to comment if the Milwaukie City Council is taking a position.

   Councilor Barnes said she would argue the appropriateness of the Milwaukie City Council's making a decision for Yamhill County. She did not have the same concern when taking a position on the proposed Multnomah County PUD because many Milwaukie residents work there. She feels Yamhill County is out of Milwaukie's jurisdiction.

   Councilor Stone had similar thoughts.

5. **Councilor Loomis** said e-mail comments were traded about the "Welcome to Milwaukie" sign. He showed the drawing to several people, and, although there are no problems with the carver, people asked, "Are those the colors?" He felt it would be best to change the colors or put the artist's concept before someone rather than going ahead with the project and then having people send letters to the newspaper.

   Mayor Bernard said he would ask Mrs. Klein on a redraft of the drawing.

   Councilor Barnes suggested a computer printout of what she actually has in mind.

   Rouyer understands the Rotary Club used a graphic designer, pro bono, from the Clackamas County Education Service District (ESD). This person developed numerous concepts that Rotary Club members reviewed and

refined to this one design. It was sent to Mrs. Klein, and the drawing before Council is her interpretation. This could be amended. She asked if it were Council's consensus to send the design to the Design and Landmarks Commission (DLC).

Mayor Bernard and **Councilor Barnes** thought it should stay with Council since this body will make the final decision. In adopting the downtown design guidelines, the Council knows what the DLC wants to see downtown and on the riverfront. Mayor Bernard asked Councilor Barnes if Scott Webb could prepare a design, and Councilor Barnes replied he probably could if the rest of Council did not object.

Councilor Stone thought the Council decided at its last meeting that it is appropriate to follow the process in place with a Commission that has done a lot of work in terms of standardizing signs and building fronts in the downtown area. This sign is going to be quite a marquee type of sign and markets the downtown area. The DLC has architects and graphic arts designers who are in the profession. She thought at the last Council meeting that the DLC would take a look at it and ultimately come back to the Council for the final decision.

Mayor Bernard said that was discussed. He would like to speed up the process because the Rotary has spent 1-1/2 years on this project and are about to say, "Forget it."

Councilor Stone said, when the Ardenwald Neighborhood did its sign, it took a good year to get it all together. It takes some time to come up with the best design and shows the City at its best. Hundreds of thousands of people are going to see this sign on what is a major highway. She feels it is appropriate to have the DLC review the design. Part of the process, in terms of helping the City Council, is for these boards and commissions to support and be advisory to the Council.

Rouyer added the DLC meets the last Wednesday of September.

Mayor Bernard asked if any members of Council objected to Scott's doing a quick design and giving both to the DLC.

Swanson discussed separating the art from the function. An artist who is a carver whose tools are knives and not pens prepared the sketch. He has seen Mrs. Klein's work, and it is incredible. It is difficult or impossible to capture her art on paper. He believed the sketch was done more to give everyone an idea of what the sign will look like. He would characterize the person doing the work as an artist on a different level. Personally, he was not that concerned about the colors, for example, because there will be an entirely different perspective when the sign is completed. This is what Mrs. Klein compiled from the 28 ideas she got.

Rouyer said the graphic artist suggested the font. Mrs. Klein took the graphic artist's ideas and came up with this interpretation.

Swanson believed the final product would be an artistic piece rather than a copy of a lot of ideas.

Councilor Loomis thought there was a whale with a hat on in the sketch.

Mayor Bernard was in favor of telling the Rotary to go ahead with the project.

Councilor Stone felt uncomfortable because the sign will be so visible. She has shown the sketch to graphic arts people, and they have some comments. She thinks the design people on the Commission need to look at it first. It never hurts to have some input. It has already been a year. The Commission is meeting in a couple of week, and then it will come back to the City Council. It is not making the process that much lengthier. She wants to make sure the sign shows the City of Milwaukie in the best light.

Councilor Loomis asked if this is something the DLC would normally consider.

Rouyer did not have a precise answer, but she did respond there are adopted design guidelines for signs. The size of the sign may trigger its going to DLC.

Councilor Loomis said if the sign did fall under those guidelines, he would like the DLC to make a review. Board and commission members sometimes are discouraged when they are not asked for their opinions.

Councilor Stone said, though not an art expert, she looks at people on these boards and commissions as having some background and expertise. It seems they are in their positions to be advisory to the Council and help it make the best decisions. This Commission is in place, so she recommended utilizing it.

Councilor Barnes said the difference for her is that this sign is a gift. She was concerned about placing a lot of conditions on people wishing to give the City a gift, which ultimately may or may not be accepted. She suggested a compromise in this case of the Council's coming up with more detailed ideas and working with the Rotary on them. She does not think the City Council wants to spend an additional month sending it to a Commission, since approved guidelines are already in place. The Council's saying to this group that its gift may not be good enough and sending it to a Commission for a recommendation is not a direction she would like to see taken.

Councilor Stone said this is a rare gift. Not everyone is going to offer a gift that will be on public display.

Councilor Barnes said that makes it even more imperative that someone's feelings are not hurt.

Councilor Stone said that makes it more imperative that the City has the most beautiful sign it can get. The goal of having a really nice sign would probably be the goal of the artist and the Rotary. She did not know if the sign dimensions were appropriate for all the detail. She is not the expert. There is a Commission in place, and no one objected at the last Council meeting to having the DLC make a recommendation. She though it was going to happen.

Councilor Lancaster had no strong feeling one way or another. Everyone has good points. Any gift needs to be considered on a case-by-case basis. It seems like it would be a natural process for this to go before the DLC, but it should be done on an expedited basis.

Open Public Forum

No public Comment.

Web-Based Crime Analysis Class

Mayor Bernard described the program based on the intergovernmental agreement between the City of Milwaukie, City of Portland, and Clackamas Community College.

New Fine Structure for Violations of State Traffic Code

Swanson said in May Council adopted a minimum fine structure effectively adopting the state traffic code together with the then existing fine structure within that code. The plan at that time was to re-adopt with each publication the newly revised Oregon Revised Statutes (ORS) to keep everything current. One of the reasons for doing that is that it is easier for the officers.

The intention all along has been to readopt at such time as the newly revised edition of the ORS are published, which in this case will be some time in 2004. The legislature adopted an entirely new fine structure, and the governor signed them into law on August 29 with an effective date of September 1, 2003. Milwaukie established minimum fines for deterrent purposes. These new fines upon which the minimums would be calculated are all higher and would certainly be in line with the deterrent effect. The question is, does the Council wish to adopt the new fine structure immediately or when the state published the new statutes? It is essentially a question of timing.

Councilor Stone said according to Swanson's report, even if the new fines were not adopted, it could be in effect if an officer cites under state law versus the municipal code. The judge certainly has discretion. Class D for example goes up from $7.50 to $15.00, and Class A goes up from $60.00 to $120.00. It is not

significant and not huge amounts of money in terms of being a deterrent. She is comfortable leaving it as it is until 2004.

Mayor Bernard and **Councilor Loomis** agreed with Stone's comments.

Councilor Lancaster saw no point in waiting. It seems the City would be saying violators would be given a break until next year, and he believes this is the wrong message.

Mayor Bernard would like to wait because the economy is tight and all fees are going up.

Councilor Lancaster did not think fees and fines should be considered together. People have complete control over their driving behavior.

Councilor Loomis hoped to look at the minimum fines again. Judge Gray indicated he does not feel it is a deterrent.

Councilor Stone thought it would be more of a deterrent if fines were higher.

Councilor Lancaster said all Council did was set a minimum, and Judge Gray can still charge the maximum.

Councilor Stone said officers could still use the state traffic code.

Councilor Barnes was in favor of waiting.

Swanson said there would be a simple amendment to the code provision adopting the 2003 ORS as soon as it becomes available.

Councilor Lancaster asked Loomis if Judge Gray had elucidated what he considered to be a deterrent.

Councilor Loomis understood that Judge Gray feels better about giving first time offenders a break.

Swanson said when minimum fines were first proposed, he and Judge Gray had a long discussion. Gray already had to tell people that state and county assessments were very large, and now he would have to tell people the City fine was large also. This would make people angry. Swanson believed Gray's point was that the City was looking good because the county and state were looking bad because their assessments were so high. Word does get out about not getting caught in Milwaukie because it will be expensive. People who continue to drive with suspended licenses, on the other hand, will not care one way or another about the minimum. The trucking company network will also pick on the minimum fines for weight violations.

Councilor Loomis asked if there were a way to communicate this to Milwaukie and LaSalle high school students in a friendly manner.

Swanson said he would be happy to call those schools and let them know what being issued a traffic citation in Milwaukie means.

Draft Mayor/Council Communication Agreements

Swanson said he tried to break the draft agreement into four groups: meeting rules; working within one's own group; working with the community; and the common thread of mutual respect. Since these will not answer every question, he recommends going back to the common thread of mutual respect for guidance.

Councilor Barnes asked if this agreement would address the content of Council's monthly *Pilot* column?

Swanson sees a number of areas in item #1 that would apply. In #2, the writer should make sure, if addressing an issue the Council has worked on, to prepare the article in such a way that is respectful. He believed items #1 and #2 would provide guidelines for dealing with this issue. As far as the subject matter goes, staff is hands off.

Mayor Bernard understands once a decision is made, though he may disagree, he needs to accept it.

Councilor Lancaster suggested only a minor change to item #2, bullet #2 by changing "action" to "actions." He was thinking more in terms of taking a position. Item #1, bullet #2, delete the word "that" at the end of the sentence. Item #1, bullet #5, he thought would be more clear if it read, "I clearly state my own opinion as being mine." Item #2, bullet #2 would read better as "City's opinion." Item #2, bullet #3 change to, "I work toward consensus, accept and respect the group decision."

Swanson suggested, "I work toward consensus; accept and respect the group decision."

Councilor Lancaster said the last consideration was item #2, bullet #4. He felt it should read "any concern" rather than "a concern."

Swanson said in past this agreement has been posted on the back wall of the Council Chambers and forgotten. He proposed continually including these in the agenda packet, so it will always be in front of people.

Councilor Stone commented on item #2, bullet #2 and suggested the type of body be clarified.

Councilor Barnes did not want the Council to make a decision and have a member or members go out and publicly bad mouth the Council as a team. She felt that should be included so there is no misunderstanding that when the Council as a team makes a decision, from that point forward, members move on. She does not want to hear about it on a radio station, in *The Oregonian*, or in some way that actively seeks to bad mouth the Council as a whole.

Councilor Lancaster thought that should be encompassed in the respect of the group decision.

Councilor Loomis commented an agreement is only as good as the people making it.

Mayor Bernard supported the stronger language.

Councilor Lancaster was concerned about trying to make the agreement cover every circumstance.

Councilor Barnes would want it basic. After a vote of the Council, no individual member will publicly ridicule that body's decision. Once the vote is done; it is done.

Councilor Loomis thought it just makes that person look bad. He would be willing to add language, but these are words with no penalty involved. If someone wants to be a jerk, he/she will.

Mayor Bernard announced the City Council would meet in executive session immediately following adjournment of the work session to discuss real property pursuant to ORS 192.660.

Mayor Bernard adjourned the work session adjourned at 6:50 p.m.

_____
Pat DuVal, Recorder

MINUTES

MILWAUKIE CITY COUNCIL
SEPTEMBER 16, 2003

CALL TO ORDER

Mayor Bernard called the 1918th meeting of the Milwaukie City Council to order at 6:00 p.m. in the City Hall Council Chambers. The following Councilors were present:

Councilor Deborah Barnes	Councilor Joe Loomis
Councilor Larry Lancaster	Councilor Susan Stone

Staff present:

Mike Swanson, City Manager	Paul Shirey, Engineering Director
Gary Firestone, City Attorney	Jeff King, Project Manager
Alice Rouyer, Community Development/ Public Works Director	Barb Kwapich, Administrative Specialist
John Gessner, Planning Director	

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS

Announcements

Mayor Bernard noted the passing of Molly Hanthorn's mother Mrs. Rowe. He also wished Centennial Committee member Jim Newman a speedy recovery from his recent illness.

Sharon Phillips is sponsoring a Centennial event at City Hall on Saturday, October 18 from 1 p.m. – 4 p.m. People are invited to meet, share memories, and enjoy refreshments provided by Mayor Bernard.

Mayor Bernard will be making a State of the City Address to the Rotary Club of Milwaukie on September 30 at Odd Fellows Hall.

Historic Moments

Mayor Bernard read excerpts from the 1892 *Oregon City Courier* regarding the East Side Electric Railroad's arrival in Milwaukie on its way to Oregon City. Milwaukie

Museum Curator Madalaine Bohl is preparing this series of historical notes in honor of the City's Centennial Year.

AUDIENCE PARTICIPATION

Carl Jacob presented a petition signed by 150 people who wish to keep large trucks of 55-feet or more off Milwaukie's small streets. He used 44th Avenue as an example, which is only 50 feet wide in his area. He has no problems with the supermarket that was approved by the Planning Commission last week, but he does have problems with the trucks. There is a utility pole very close to where the trucks will be exiting. People have told him they are tired of the trucks and are concerned about them going through small residential streets. The Safeway supermarket will push traffic further away from 42nd Avenue and Harrison Street and King Road and 44th Avenue. He presented it to the City Council for the record and hoped it would help them make the proper motion.

CONSENT AGENDA

Councilor Stone requested the Design and Landmarks Commission Bylaws be discussed in Other Business.

It was moved by Councilor Loomis and seconded by Councilor Stone to approve the Consent Agenda that consisted of the City Council minutes of September 2, 2003. Motion carried unanimously.

PUBLIC HEARING

Citizen Utility Advisory Board Work Plan

Discussion of this topic began at 6:15 p.m.

Engineering Director Paul Shirey presented the staff report. The following Citizens Utility Advisory Board (CUAB) members joined him: Chair Bob Hatz, Betty Chandler, and Ed Miller.

Hatz said CUAB members make field trips to City wells, streets, storm water facilities, and the Kellogg Treatment Plant to get a better understanding of how these facilities operate. The Board suggests that the Council join them occasionally to find out how it operates. The Board hopes the proposed work plan is well received.

Shirey summarized the 13 items in the work plan. The Board is seeking Council direction on two items: the options for creating additional revenue through a transportation utility maintenance fee and a street lighting fee or utility privilege tax. The third item is the annual capital improvement plan (CIP) update. The fourth is a carry over from last year which is a code amendment having to do with system development charges. The storm water master plan, item number 5, is also from last year, and the Board anticipates bringing it to Council for consideration at the end 2003. Item 6,

annexation project, has to do with helping property owners in the unsewered areas to annex and utilize City services. The pavement management system, item number 7, will give the City a systematic means of evaluating the quality of the street system and provide a means for prioritizing improvements. Number 8, the sanitary sewer master plan, is an update that gives a 5- to 7-year window of system improvements and repairs, and the Board expects to have this before the City Council spring 2004. Item number 9, Oak Lodge sewer rate adjustment, addresses equalizing Milwaukie rates for Island Station residents being served by Oak Lodge. Number 10 looks at providing service to those property owners in North Milwaukie who currently received sanitary sewer service from the City of Portland. The wastewater consolidation study, item number 11, looks at the alternatives for providing wastewater treatment in north Clackamas County. The CUAB will review the outcome and prepare a recommendation for the City Council at the beginning of next calendar year. Item number 12, the water system vulnerability report is a federal requirement that mandates a study and plan to deal with threats to the City's water system. This report must be completed by the June 30, 2004. The final item, number 13 is the City's intergovernmental agreement with Clackamas River water for a backup water source that is due for a review and possible revision.

Mayor Bernard was impressed by the list of projects. The transportation utility fee is going to a vote in November, so he suggested delaying the study until after the election.

Shirey said the Board is waiting for Council direction on this item.

Mayor Bernard asked how the water system vulnerability study was being funded.

Shirey said the study is federally mandated and locally funded.

Councilor Lancaster commented on the large number of projects and asked Chair Hatz if he believed the Board could accomplish everything.

Hatz said the Board would give it its best.

Councilor Lancaster understands the items in this work plan have not been prioritized and presumes there will be some sort of process. Is the Board looking for Council direction on prioritization?

Shirey said the Board simply plans to work through the items if the Council approves them.

Councilor Barnes commented this group seems to have put a lot of thought into these projects. If one had to choose, what would be the top priority?

Hatz responded the roads are important because funding is so hard to obtain. In addition, the City's water supply is very important.

Councilor Stone thanked the Board and staff for the good work. It is an ambitious work plan, and she wanted people to know the Council is appreciative of the time given to the City.

There was no additional correspondence for Council consideration, and there was no public testimony.

Mayor Bernard closed the public testimony portion of the hearing at 6:25 p.m.

It was moved by Councilor Stone and seconded by Councilor Barnes to approve the Citizens Utility Advisory Board Work Plan. Motion passed unanimously.

Water Cost of Service Rate Adoption

Mayor Bernard called the public hearing on the proposed water rate increase to order at 6:27 p.m. The purpose of the hearing was to consider public comment on the proposed increase.

Engineering Director Paul Shirey and **Associate Engineer Jay Ostlund** presented the staff report. Ostlund explained the City had contracted with Donovan Enterprises. After meeting with the Citizens Utility Advisory Board (CUAB) on two occasions, the Board drafted a recommendation. There was a Council work session on June 4, 2003. Ostlund introduced Steve Donovan.

Donovan said the review of the water financial system began in April, and there were meetings with the CUAB on May 7 and June 4. The original schedule was to meet with the CUAB one time, but, at the May 7 meeting, the Board created such a list of homework assignments and options to review that the members convened again in June. The Board is very thorough, and the members are totally engaged. The City Council is well served by having this advisory board. There was a Council work session on July 14, and at this hearing Donovan provided a condensed version of that work session. There have been no significant events or changes in numbers since the July work session.

Donovan covered five key points: the rate study process and timeline; existing rates and structures; key points affecting Milwaukie's rates; CUAB recommendation; and chart of proposed rates for a sample single family residential home. The scope of the project was to look at the numbers and to review the City's rate structure and costs to provide water service. The purpose of the study was to ensure the water utility is fully recovering its service provision costs. The CUAB discussed this issue at two meetings and came up with a preferred option from a group of several. There have been no changes to the CUAB recommendation since the July Council work session.

Milwaukie is a residential community with 88% of the utility customers served by a standard ¾-inch meter. The billing system is set up on a bi-monthly basis with a fixed charge of $5.95 over the two-month period with a fee of $1.35 per hundred cubic feet

(ccf). In fiscal 2002, 63% of all water was sold to residential customers. The balance was sold to the multi-family, commercial, and industrial base. The metered charge for these customers varies based on meter size, which is 1- to 6-inches.

Donovan discussed the key points affecting the water rates. A rate adjustment to the water system has not been implemented since 1995. The greatest impact to the utility cash flow at this time is legal fees associated with the groundwater contamination litigation. The City has spent $330,000 since 2002, and Donovan anticipates an additional $200,000 this fiscal year.

The City is not currently funding replacement or depreciation. The CUAB and consultant recommend phasing this funding in over a five-year period to avoid a large rate increase. Milwaukie is a community at build out, and growth cannot be counted upon to help fund the system. The compounded annualized growth rate in the customer base is 0.29%. The only way to increase that is through annexation or infill and redevelopment. The CUAB further recommends funding legal fees through the capital reserve fund because it is the only fund in the water systems accounts that has a sufficient amount of cash to fund these legal expenses. If the City were to attempt to fund legal fees through rates, there would be another spike that the CUAB found unacceptable.

With those two key points, revenue requirements can be fully funded while meeting capital requirements. The proposed option meets the CUAB requirements of small steady rate increases over time. If the litigation is settled, all bets are off, and the City Council will have to determine what to do at that point with an infusion of resources. This is a conservative approach assuming a judgment at the end of this fiscal year and conclusion to the trial phase. It is assumed the City will receive a positive judgment, but appeals are anticipated in the amount of about $50,000 to the end of 2010 for the appellate process. Donovan believes this is a prudent approach when forecasting. Depreciation expenses will reach the audited amount of $325,000 by 2010. At that point, the rate curve will fall because depreciation will be fully funded.

Finally, Donovan provided a comparison of a monthly rate for a water customer using 100 ccf per month. Currently the cost is about $16.48 per month. Based on the CUAB recommendation, it would go up to $17.17 or $.69 per month increase for water service.

Councilor Barnes asked what the average water bill is for a Milwaukie residential customer.

Donovan responded the monthly average is about $15 for a customer consuming 700 – 800 ccf per month.

Councilor Barnes finds that amount hard to believe based on her own experience. Her average bill is $102 - $110 every two months. She has heard from others they are also paying over $100. She asked if there were a way to verify this.

Donovan explained that summer irrigation peaks would impact customers' bills. Conversely, senior citizens using low volumes of water may have a $10 bill every two months. Because this is a consumption-based rate, there is a normalized curve. The beauty of this type of system is that one's bill is a function of one's consumption. The customer has the choice of changing his or her habits.

Correspondence: None.

Audience Testimony: None.

Councilor Loomis said at last night's work session the Council discussed holding this decision over so there can be a review of the volume based sewer rate.

It was moved by Councilor Loomis and seconded by Councilor Stone to postpone and reset the water rate item scheduled for September 16, 2003 to November 18, 2003 and to schedule reconsideration of the sanitary sewer rate action of July 14, 2003 for the same evening. Motion passed 4 – 1 with the following vote: Councilor Barnes, Councilor Lancaster, Councilor Loomis, and Councilor Stone aye; Mayor Bernard nay.

OTHER BUSINESS

Natural Hazard Mitigation Plan -- Resolution

Administrative Specialist Barb Kwapich, Risk Manager and Natural Hazard Committee Chair, provided the staff report in which the City Council was requested to approve a resolution adopting the Multi-Jurisdictional Clackamas County Natural Hazards Mitigation Plan including the Milwaukie Addendum. She introduced Cindy Kolomchuck who acted as the Committee's technical advisor in preparing the plan.

The Disaster Mitigation Act of 2000 required that all entities develop a natural hazard mitigation plan to remain eligible for funding after emergencies and for mitigation funding prior to emergencies. Milwaukie will be the first city in Clackamas County to, upon approval, enter the mitigation grant program, the third in Oregon, and the ninth in the nation.

Kolomchuck said after November 2004, all jurisdictions would be required to have these plans to be eligible for nationally competitive grants. Milwaukie should be in a good position for grants to fund such things as seismic upgrades.

Councilor Lancaster said this was a very comprehensive piece of work. When looking at the itemized list of those participating in developing the plan, he did not see anyone from the state or the private sector.

Kolomchuck said this is a multi-jurisdictional plan, so the City Council is actually adopting the Milwaukie addendum to the Clackamas County Natural Hazards Mitigation

Plan. Milwaukie has a Hazard Mitigation Advisory Committee, and there is also an advisory committee at the county level. Milwaukie has representation on the county committee, and resources are pooled.

Councilor Lancaster understands all incorporated cities will be required to have a plan.

Kolomchuck said jurisdictions are required to have a plan to be eligible for 2004 funding. Grants are funded at $150 million, so Milwaukie, as one of nine cities in the nation to have adopted its plan, is in a very good position.

Councilor Lancaster asked who coordinates and integrates the plans of multiple jurisdictions and monitors potential overlap.

Kolomchuck said that is the purpose of the plan because natural hazards do not adhere to jurisdictional boundaries. If there is a flood prevention project upstream, downstream residents would be affected. As this program evolves and other cities start adopting their plans, the recommended action is for all jurisdictions to work together in developing grant applications.

Councilor Lancaster said he does not wish to continually revise Milwaukie's as other cities adopt their plans.

Kolomchuck said Milwaukie would not have to adopt another city's mitigation plan. The action being considered is adoption of Clackamas County's plan with Milwaukie's addendum. Each plan addresses an annual update and mitigation action items. As those are checked off, new projects can be incorporated in the annual review. This is a dynamic document with ongoing updates.

Councilor Lancaster referred to page 18, Section 3: Hazard Assessment. Item 3 addresses risk analysis and estimating potential losses and notes there is "insufficient data for conducting a risk analysis for the natural hazards affecting Milwaukie." It seemed to him this would be a critical first step. If we do not know what we are dealing with, how do we develop a plan to deal with it? What data do we need, and how do we get it? This paragraph goes on, "a risk assessment will be conducted when the resources are available." What resources does the City need and when might one expect them to be available?

Kolomchuck said there are three pieces within a hazard assessment. One is identifying and mapping where the hazards exist. The second is a vulnerability assessment that looks at the infrastructure and properties that overlay the hazard areas. Some people see that as a risk assessment. Right now Milwaukie has good hazard data and a good GIS department that has helped develop the maps. There is a good idea of where Milwaukie's vulnerabilities lie. Making a risk analysis involves modeling particular natural hazard scenarios such as a 6.7 earthquake at 12:10 p.m. with school in session. This would result in a quantitative assessment of causalities and damage to public facilities. This data would help prioritize mitigation activities. The problem with

that is the only current model is one developed by FEMA used at the national level. What would be needed on the more local level is information unique to the area such as a building inventory and population capacity. Gathering data of this detail can be developed as part of an action item in the mitigation plan. As far as FEMA is concerned, what Milwaukie has documented so far is sufficient for its approval.

Kolomchuck said the City would be able to apply for grants to conduct studies, such as a building inventory. The Hazard Mitigation Advisory Committee would consider what risk analysis needs to be performed, what data is needed, and what resources are available. Identifying available resources is somewhat premature until the desired risk analysis is selected. A lot of process and hard work will need to go into this program. Milwaukie will be eligible for funding, but it must identify its projects.

It was moved by Mayor Bernard and seconded by Councilor Barnes to adopt the resolution adopting the hazard mitigation plan. Motion passed unanimously.

RESOLUTION NO. 38-2003:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ADOPTING THE MULTI-JURISDICTIONAL CLACKAMAS COUNTY NATURAL HAZARDS MITIGATION PLAN INCLUDING THE MILWAUKIE ADDENDUM, AS REQUIRED BY TITLE 44 CODE OF FEDERAL REGULATIONS PART 201 AS AUTHORIZED BY THE DISASTER MITIGATION ACT OF 2000, IN ORDER TO REMAIN ELIGIBLE FOR STATE AND FEDERAL DISASTER RELIEF FUNDING.

Intergovernmental Agreement with Clackamas County Regarding Enterprise Zone Services Provided by the County

Project Manager Jeff King presented the staff report. The City Council was requested to authorize the city manager to sign an intergovernmental agreement (IGA) with Clackamas County for Enterprise Zone services for the City of Milwaukie. This is a renewal of an expired agreement with a few changes that provided for better coordination and gives the City marketing, administration, and technical assistance. The enterprise zone provides for property tax incentives for companies adding 10% new job creation or a minimum of $25,000 in new investment. It also provides for a 3- or 5-year incentive depending on the criteria met. The IGA was reviewed by City and County counsels. The current enterprise zone expires in 2008.

Mayor Bernard asked how many businesses have taken advantage of this enterprise zone.

King believes ODS and one or two others have used the enterprise zone.

It was moved by Councilor Barnes and seconded by Councilor Loomis to authorize the city manager to sign an IGA with Clackamas County for Enterprise Zone services. Motion passed unanimously.

Lien on Real Property

Firestone presented the staff report. The item under consideration is the amount of the assessment for abatement costs incurred by the City in abating the nuisance declared by Council. The nuisance was located on property within the City owned by Union Pacific Railroad.

Under Milwaukie Municipal Code (MMC) Section 8.04.200, when a nuisance is abated, City staff is required to keep account of the costs. The city recorder did that and determined the amount to be $22,500.87. Notice was provided to the property owner as required by the code, and the property owner, Union Pacific, objected to the amount. The code provides that the Council determines the amount. Therefore, under MMC 8.04.200, the City Council is to hear and determine the objections to the costs to be assessed. The staff position is that the assessment amount is $22,500.87. This issue was discussed at a previous meeting, and there was other testimony. It is the Council's job to determine how much the City spent on this abatement and what those costs are.

Jill Schneider, Kilmer, Voorhees & Laurick, phone 503.224.0055, located 732 NW 19th Avenue, Portland, represented Union Pacific. The nuisance that was removed was a house on property owned by Union Pacific Railroad. As Firestone noted, notice was given to the Railroad; however, the MMC says that notice may also be given to the owner of the property or the person in charge of the property. This Council has gone through a lot of administrative effort to get the person who owns that house, Emmert International, to take care of the removal costs. Unfortunately, Mr. Emmert has refused to pay for those costs. It is clear the person in charge of the property, in fact correspondence from the City supports this, is Mr. Emmert as the code recognizes.

Complicating this matter is that the City engaged in and negotiated a contract for the removal of that property assigning that responsibility to Emmert International. That contract executed in August 2002 was between the City of Milwaukie, Mr. Peterson, who owned the house, and Mr. Emmert who purchased the house. The Union Pacific Railroad, as owner of the property, was not included. If Union Pacific had been involved in that contract, some of that administrative work could have been eliminated. That contract clearly recognizes Mr. Emmert as the person in charge of the property and the person in charge of removing it. The nuisance costs do not apply to Union Pacific Railroad.

The problem before the City Council is how to get its money back. It was clearly a nuisance, and it was removed at great cost to the City. The trouble is the proposed remedy will end up costing the City additional funds. Union Pacific Railroad will not fork over $22,000 for the removal of a nuisance for which it had a contractual release from Mr. Peterson. Mr. Peterson will be the immediate person responsible. He will not pay

the $22,000 as Union Pacific has been informed, and he will then assign it to Mr. Emmert. Mr. Emmert may or may not pay, but if he chooses not to pay he will raise the same defenses he would have if the City had notified him as the person in charge.

The complicating factor is that if the City assesses a lien on the property of the railroad, two other attorneys will get involved. She thinks the City would rather have those legal costs going to the water problem. There are other ways to spend legal costs. The amount of money for the removal of the property properly, legally, and by all accounts by justice belongs to Mr. Emmert. By filing a lien on the railroad's property, two other attorneys will be involved. There will be two other parties to the same defenses Mr. Emmert will raise. The City will have to fight him, and it is from him recovery must be made.

Mike Walsh spoke for Jack Hammond representing Rich Peterson. He understands the City was kind enough to make the file on this issue available, and Hammond reviewed it. Hammond indicated the City had been more than patient in going through this process, and Walsh understands the City is sick and tired of this house. It would make sense the City would just want to collect its expenses. Firestone said the City Council is here to determine the amount of the assessment, but Walsh was not sure Peterson would care what amount that might be. The issue is who is responsible for paying it. Walsh is not there to object to the amount. Roughly, the City spent about $10,000 to demolish the house and another $10,000 or $12,000 on administrative fees, and the City probably should get its money back. It makes sense that through its patience, the City should want to get its expenses back as soon and as simply as it can.

The thought was, at one point, to alleviate the City from any further problems it would be easiest just to lien the property and let the railroad, Emmert, and Peterson work it out. The City could then sit back and collect the money. From what Schneider has said on behalf of the railroad, that is not the way it is going to work. The railroad is not going to pay the lien. Mr. Peterson has a contract with the City that says he is relieved of all further liability regarding this house and will not pay the lien. By starting down this path, Walsh believes the City will end up in four-party litigation. Firestone could probably estimate how much the City would spend in that type of litigation. $22,000 does not go far in litigation these days, so one gets to the point of whether it is worth it or not. Walsh was not suggesting the City back off because it is entitled to the money for its expenses. He does not think anyone in this room really feels the railroad should be paying, and as far as Walsh knows, Union Pacific did not even know about this agreement between Emmert International, the City, and Mr. Peterson. Now through some legal maneuver the City wants to put a lien on the property, and the railroad will not pay it. Walsh reiterated what Schneider said about a culpable party, and there is a contract with that corporation. The City has a straightforward case. The lien route will be more expensive.

Mayor Bernard asked for clarification of comments about an agreement.

Firestone replied there is an agreement between the City, Mr. Peterson, and Emmert International. It was signed at the time Mr. Peterson transferred his interest to Emmert. The agreement was primarily between Mr. Peterson and Mr. Emmert. The City signed on to recognize Peterson was transferring his interest in the structure to Emmert.

Walsh said Mr. Peterson's position is that he was approached by the City and Mr. Emmert to enter into this agreement.

Mayor Bernard understands the City participated to generate some activity.

It was moved by Mayor Bernard and seconded by Councilor Lancaster to authorize a lien in the amount of the City costs for abating the nuisance on certain real property owned by Union Pacific for the purpose of discussion.

Councilor Barnes said the parties involved in this fiasco, with probably the exception of the railroad, started out with the hopes and dreams of moving a house with the expectations of making money. It was not good will efforts. She hears over and over that it did not work out, so people do not want to pay the bill now. That is not how the real world works. She does not want to hear anyone else who was party to these mistakes that the City should write it off. Residents count on the City to get this bill paid. Council owes it to City staff who worked countless hours to get this corrected. She does not intend to let it go. Someone will pay $22,500 to the City because what started out with good will intentions ended up with someone thinking they could make a fast buck and has now bailed.

Councilor Lancaster asked the breakdown between the administrative and actual demolition costs.

Swanson said Dan Obrist Excavation was $9,800 for demolition. Disposal costs at the Metro Transfer Station were $3,555. The abatement surveys for lead paint and asbestos were $1,075 and $55. Staff costs were $5,228, and legal services were $2,800. Roughly $14,500 is for abatement and about $8,000 in administrative costs.

Mayor Bernard suggested negotiations between the parties with a lien date set in about 30 to 60 days.

Councilor Stone commented on the situation. It seemed to her this is complex and complicated in terms of who is culpable. It looks like there are several parties who are. She does not want to see the City spending any more money on this in terms of further litigation. She has mixed feelings about putting a lien on the property of the railroad. According to the municipal code, to declare a nuisance, it must be declared on real property if she understands correctly.

Firestone said that is correct. Basically, a nuisance takes place on real property, and the lien, if any, is imposed on the property where the nuisance is located.

Councilor Stone said, therefore, that is why the suggestion has been to put the lien on the railroad. However, the real problem began with Mr. Peterson and subsequently transferred to Mr. Emmert. In hindsight, maybe the problem began with the North Clackamas School District in giving it to the wrong person as there were several people trying to get this house. Nonetheless, Stone feels that Mr. Peterson did not fulfill his responsibilities in getting the house moved and neither did Mr. Emmert. She thinks there have been a lot of mistakes made by all parties involved. Perhaps on the part of the City as well. She would like to see, rather than continuing down the road of litigation, some compromise between the parties involved. She would not be in favor of imposing a lien, even with a timeline, at this point. She thinks the people who are responsible need to step up to the plate and pay the bill.

Councilor Loomis asked Firestone his feeling on future litigation if they refuse to pay.

Firestone said it depends on how active they are and how active the City is. One possible, though not very likely scenario, is that the Council sets an amount that is established as a lien, and the lien sits there. The City does not try to collect on it, and the railroad does not fight it nor does it try to collect from others. This would be the least likely scenario, and there would be no litigation costs. More likely is that the lien is imposed. The railroad has indicated it is not going to pay but would try to get Peterson to pay. At that point, it would be Peterson's choice whether to pay or try to get Mr. Emmert to pay or take some kind of legal action. His guess would be that Mr. Peterson would go after Emmert International. If Emmert International is brought in, Firestone would anticipate counter claims against that City. In that scenario, the City would be involved in four party litigation. The City's litigation costs would almost certainly exceed the amount of the lien, and those costs would probably not be recoverable.

Councilor Loomis asked why the railroad was not involved in the contract.

Firestone said the railroad was not involved in the contract because essentially nobody thought about it at that time. No one was checking the contract between Mr. Peterson and Union Pacific. Going back to that point in time, the City Council had done its first nuisance declaration while Mr. Peterson owned the structure. Essentially, directed against Mr. Peterson, the idea was to get him to remove it or do whatever to abate the nuisance. The City made several efforts to preserve the structure. Emmert International was perceived as having the resources to find a location for the structure and to move it. Because of the City's interest in preserving the structure, the City did agree, essentially, to give more time because of the new party's involvement. Otherwise, if he recalled correctly, the first nuisance was going to run its course, and the City would have abated at that time. That is how the City got involved by trying to extend the time and not going after Mr. Peterson which was essentially a precondition to the agreement. Mr. Peterson's attorney insisted on that provision. Otherwise, it was the City's understanding there would be no agreement, and the City would have had to abate the nuisance at that time.

Councilor Loomis commented it is disappointing that the City was trying to do the right thing, and it ends up like this.

Swanson said about that time Mr. Peterson's specific plans in October were to seek a deconstruction permit and to take the house down. When the time did not appear to be enough, his second request was to seek demolition of the house. The City's role was to step in and attempt to forestall that and prevent either deconstruction or demolition of the house in October 2001. What happened in terms of the agreement at that time was within the frame of actually being presented with a threat of deconstruction of demolition. The agreement was to basically prevent that from happening at that time.

Mayor Bernard understands the City could go directly after Peterson for failure to abate.

Firestone said the City could not go after Peterson but could perhaps look at Emmert International.

Councilor Lancaster tended to agree with Stone in that there are four parties involved, and, taking a step back, all four parties have some responsibility. He asked Firestone if there were any possibility of a negotiated settlement with these parties without making a lien.

Firestone would not rate the possibility as very high. He can try, but he is not optimistic.

Councilor Lancaster asked if there would be any merit in delaying the lien to a short time certain to negotiate some type of settlement.

Councilor Barnes commented that was done the last time with 30 days given to negotiate to a solution.

Firestone understands the assessment amount would be determined. The lien would happen as a matter of course, when the last time the entire decision was postponed. There is a possibility, and he would be willing to make the effort to negotiate.

Mayor Bernard understands the motion could be amended to say the lien could be filed in 60 days should there be a failure to negotiate.

Swanson said, technically, it is the Council's responsibility to determine the amount.

Firestone said the code says "an assessment is caused as stated or determined by the Council shall be made by resolution and shall thereupon be entered in the docket of city liens." With the original resolution, a provision was included extending time because of a timing question relating to the notice. The Council sets the amount and becomes a lien. Section 2 of the proposed resolution says "shall be assessed as costs for the abatement and entered as a lien in the City's lien docket." The last part is unnecessary

because it would happen whether or not the resolution said that the code requires it. There is room for interpretation of the word "thereupon." It would be possible for the Council to provide guidance to staff as to what would be an appropriate time for the amount to be transferred from the determination to become a lien. What needs to be amended is the resolution, so the Council would have to determine those amendments. The motion on the table could be amended or withdrawn and a new motion made. The other option is that the resolution can take effect at some future time, and section 3 could probably be deleted.

Councilor Loomis asked if the resolution could be adopted and determine at a later date when the lien would be imposed.

Firestone said the City Council would have to decide now when the resolution would take effect. Resolution can take effect immediately or at whatever time the Council decides. The amount can be set and the effective date set in 60 days.

Councilor Loomis asked if this could be brought up at another time if the resolution is not adopted.

Firestone said it could as long as it is properly noticed. If a motion is defeated, the process would probably have to be started again. If the Council takes no action, it could be revisited in the future.

Mayor Bernard understands that would require his dropping his motion.

Councilor Loomis asked what the situation would be if Council decides it wants to drop the lien.

Firestone said if the amount is set and Council decides it does not wish to assess the lien prior to the effective date established in the resolution, there could be a motion at a meeting to reconsider and the resolution withdrawn. Another procedural option is a motion for a new resolution either amending or repealing the previous resolution.

Swanson summarized the comments. One simple way to do this is to take the draft resolution, delete Section 3 entirely, and make section 4 a new section 3 that would read, "this resolution shall take effect 60 days after its adoption." That sets the amount of the abatement so that if nothing else happens, 60 days from now that becomes a lien. This would go on a Council agenda prior to the expiration of those 60 days with an action to either amend or reconsider this particular resolution. If there has been action by the parties by then that would resolve this issue, then this resolution could simply be amended or repealed. If not, the total cost of the abatement could be set at $0 or it could be rescinded or it could be left as is and the lien assessed. Basically, the option is there for the lien and to negotiate.

Mayor Bernard amended his previous motion by deleting Section 3 and replacing that with Section 4 and changing the effective date to 60 days after its adoption.

Councilor Lancaster seconded the motion to amend. Motion passed 4 – 1 with the following vote: Mayor Bernard, Councilor Barnes, Councilor Lancaster, and Councilor Loomis aye; Councilor Stone nay.

RESOLUTION NO. 39-2003:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING A LIEN IN THE AMOUNT OF CITY COSTS FOR ABATING THE NUISANCE ON CERTAIN REAL PROPERTY OWNED BY UNIOIN PACIFIC RAILROAD.

Council Position on the Formation of an Electric People's Utility District (PUD) in Yamhill County – Resolution

Mayor Bernard said he brings this resolution to Council for consideration. Essentially, it says PGE has been serving Oregon for 100 years and that condemnation of private business through the establishment of an entirely new government entity with independent taxing authority is a distraction that is not needed by the community. He expressed his opposition to bigger government and noted the City adopted a similar resolution several months ago opposing the City of Portland's forming a people's utility district (PUD). He is concerned about the cost of electricity to ratepayers.

It was moved by Mayor Bernard and seconded by Councilor Lancaster to adopt the resolution expressing opposition to formation of an electric people's utility district in Yamhill County.

Councilor Barnes is opposed to this City Council's telling Yamhill County residents what to do. Many residents of Milwaukie work in Portland and Multnomah County, so she felt input on the previous resolution was appropriate.

Councilor Loomis agreed that the opinion on Multnomah County had a direct effect on Milwaukie residents. He did not support the proposed resolution.

Councilor Lancaster added this resolution has no legal and binding effect on Yamhill County and is simply a statement of opinion. He would vote in favor of it because of the simple principle, with rare exception, government does not do it as well as private industry. The foundation is not there for a public entity to take over this enterprise.

Mayor Bernard stated his opposition to any government agency taking over a business that is not broken. PGE is 114-year old business that is not broken; however, Enron is. PGE pays Milwaukie franchise fees, but there are no guarantees that would continue. He asked how much the City receives annually from PGE in franchise fees.

Swanson said the City receives about $300,000.

The motion to adopt the resolution opposing formation of an electric PUD in Yamhill passed with the following vote: Mayor Bernard, Councilor Lancaster, and Councilor Stone aye; Councilor Barnes and Councilor Loomis nay.

RESOLUTION 40-2003:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, IN OPPOSITION TO THE FORMATION OF AN ELECTRIC PEOPLE'S UTILITY DISTRICT IN YAMHILL COUNTY.

Design and Landmarks Commission Bylaws

Councilor Stone asked that this item be pulled from the Consent Agenda for discussion because she had several questions. Overall, she thinks the bylaws are good. On page 1, item #2 reads "a majority of the Commission may recommend to the City Council that a member be removed from the Commission by the City Council." She asked what would constitute a removal from this Commission, and would there necessarily have to be a reason or reasons.

Firestone reviewed the code and basically determined that member of boards and commissions serve at the pleasure of the Council. There are no guidelines for what would apply either for the commission or for the Council. The understanding is that the commission wants the ability to let the Council know if someone is not regularly attending the meetings. One reason the Council is given total discretion is that it would be impossible to identify all unacceptable circumstances under which a person might be removed. It is open and consequently the Commission has no provisions as to what the grounds might be because there is no guidance from the code. He cannot envision the Commission's using this power lightly. Basically, there are no standards in the code.

Councilor Stone's other question had to do with #4, "if a quorum is not attained fifteen minutes following the scheduled time of call to order, the meeting shall be cancelled." Does a quorum mean a certain number of people or a majority of the members present or of the membership.

Firestone said a quorum is the majority of the membership. He believes that is clarified in the code.

Councilor Stone said Article II sections 3 and 5 essentially say the same thing and suggested the sections be combined. Both say if the chairperson is absent, then the vice-chair takes over.

It was moved by Councilor Stone and seconded by Councilor Loomis to accept the bylaws for the Milwaukie Design and Landmarks Commission with the amendment to combine sections 3 and 5 in Article II. Motion passed unanimously.

Other

Mayor Bernard discussed a property developer who might be in the Milwaukie court system for cutting down a huge fir tree within the public right-of-way without a permit. He understands the most the City can charge is $500. However, under state law, the City could charge three times that amount. He believed the Council should review these types of fees.

Firestone said, although the most likely resolution to this matter is through the municipal court, there is some possibility there may be a Council proceeding. To be cautious, he appreciated the comment that staff should consider the penalty provisions and pointed out there are various options for the City to pursue.

Mayor Bernard would like to see the penalties higher so this type of action is considered more than just the price of doing business. He would also like to revisit the code section on cutting trees in the public right-of-way.

Swanson corrected an earlier statement he made about the amount of the PGE franchise fees, which were actually $728,000 last year. The $300,000 is the amount Milwaukie pays PGE for street lighting.

Mayor Bernard announced the City Council would meet in executive session immediately following adjournment of the regular session to discuss pending or likely litigation pursuant to ORS 192.660.

ADJOURNMENT

It was moved by Councilor Lancaster and seconded by Councilor Stone to adjourn the meeting. Motion passed unanimously.

Mayor Bernard adjourned the regular session at 7:45 p.m.

_____
Pat DuVal, Recorder

To: Mayor and City Council

Through: Mike Swanson, City Manager

From: Steve Campbell, Code Compliance Coordinator

Subject: Abatement Lien 4201 SE Meadowcrest

Date: September 23, 2003

Action Requested

That the City Council, by resolution, enter the costs of the abatement of the nuisance of the property located at 4201 SE Meadowcrest in the amount of $520.00 in the docket of city liens.

Background

On August 13, 2003, the City hired a contractor to abate a nuisance at the property located at 4201 SE Meadowcrest.

The costs of the abatement, including the clean up, administrative services, and legal fees, are $520.00. (We contract with the Multnomah County Sheriff's Office for their abatement services at $390.00 per day. This abatement took one day to complete. I supervised the abatement for five hours, and pursuant to our Municipal Code the City shall assess administrative costs to the property owner. The City is able to charge back all administrative costs totaling $130.00.)

Notices of the costs were sent to the property owners. Pursuant to Milwaukie Municipal Code Section 8.04.200, they are given ten days within which to file a notice of objection to the assessments with the City Recorder and thirty days in which to pay the assessment.

Upon expiration of the thirty days, and without notice of objection having been filed, Milwaukie Municipal Code Section 8.04.200 provides as follows:

“If the costs of the abatement are not paid within thirty days from the date of the notice, an assessment of the cost as stated or as determined by the council shall be made by resolution and shall thereupon be entered in the docket of city liens, and upon such entry being made shall constitute a lien upon the property from which the nuisance was removed or abated.”

This becomes a lien upon the property, which clouds title if any sale is proposed. Eventually, satisfaction of the lien becomes advisable. Pursuant to Milwaukie Municipal Code Section 8.04.200, the lien bears interest at the rate of six (6) percent per annum.

Concurrence

The City Manager and City Attorney concur in recommending this action be taken.

Fiscal Impact
None

Alternatives

The City could continue to seek payment by demand letters, which do not have the same force as the lien.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ASSESSING THE COSTS OF ABATEMENT OF THE NUISANCE LOCATED AT 4201 SE MEADOWCREST AND ENTERING THE SAME ON THE DOCKET OF CITY LIENS PURSUANT TO MILWAUKIE MUNICIPAL CODE SECTION 8.04.200 (D)

WHEREAS, notice of a nuisance was issued and posted on the property located at 4201 SE Meadowcrest, Milwaukie, Oregon on July 24, 2003; and

WHEREAS, the property owner or person in charge of the property did not abate the property or file a protest to the notice of a nuisance within ten days of the posting; and

WHEREAS, the City abated the nuisance after first obtaining a warrant to enter the property to do so; and

WHEREAS, the City has maintained an accurate accounting of the costs of abatement, including administrative overhead; and

WHEREAS, on August 14, 2003 the City forwarded to the owner or person in charge a notice of the abatement costs in compliance with Milwaukie Municipal Code Section 8.04.200 (A) et seq; and

WHEREAS, there has been no objection filed to the abatement costs within (10) days after the date of the notice nor have the costs of the abatement been paid within thirty (30) days from the date of the notice.

NOW, THEREFORE BE IT RESOLVED, BY THE CITY COUNCIL, CITY OF MILWAUKIE, STATE OF OREGON, that, pursuant to Milwaukie Municipal Code Section 8.04.200 (C):

Section 1. The assessment of the costs for the abatement of the said nuisance, including administrative overhead, is in the amount of $520.00

Section 2. The above assessment of costs shall be entered in the docket of city liens.

Section 3. This resolution is effective immediately upon adoption.

IT IS FURTHER RESOLVED THAT the City may also record the lien as a lien in the County lien records.

Introduced and adopted by the City Council on _____.

_____
James Bernard, Mayor

ATTEST:

_____
Pat DuVal, City Recorder

APPROVED AS TO FORM:

_____
Ramis, Crew, Corrigan & Bachrach LLP

CITY OF MILWAUKIE CENTENNIAL 1903~2003

To: Mayor and City Council

Through: Mike Swanson, City Manager

From: Steve Campbell, Code Compliance Coordinator

Subject: Abatement Lien 12106 SE 21st and 2120 SE Bobwhite

Date: September 23, 2003

Action Requested

That the City Council, by resolution, enter the costs of the abatement of the nuisance of the property located at 12106 SE 21st and 2120 SE Bobwhite in the amount of $598.20 in the docket of city liens.

Background

On August 26, 2003, the City hired a contractor to abate a nuisance at the property located at 12106 SE 21st and 2120 Bobwhite.

The costs of the abatement, including the clean up, administrative services, and legal fees, are $598.20. (We contract with the Multnomah County Sheriff's Office for their abatement services at $390.00 per day. This abatement took one day to complete. I supervised the abatement for ten hours, and pursuant to our Municipal Code the City shall assess administrative costs to the property owner. The City is able to charge back all administrative costs totaling $208.20.)

Notice of the costs was sent to the property owners. Pursuant to Milwaukie Municipal Code Section 8.04.200, they are given ten days within which to file a notice of objection to the assessments with the City Recorder and thirty days in which to pay the assessment.

Upon expiration of the thirty days, and without notice of objection having been filed, Milwaukie Municipal Code Section 8.04.200 provides as follows:

“If the costs of the abatement are not paid within thirty days from the date of the notice, an assessment of the cost as stated or as determined by the council shall be made by resolution and shall thereupon be entered in the docket of city liens, and upon such entry being made shall constitute a lien upon the property from which the nuisance was removed or abated.”

This becomes a lien upon the property, which clouds title if any sale is proposed. Eventually, satisfaction of the lien becomes advisable. Pursuant to Milwaukie Municipal Code Section 8.04.200, the lien bears interest at the rate of six (6) percent per annum.

Concurrence

The City Manager and City Attorney concur in recommending this action be taken.

Fiscal Impact
None

Alternatives

The City could continue to seek payment by demand letters, which do not have the same force as the lien.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ASSESSING THE COSTS OF ABATEMENT OF THE NUISANCE LOCATED AT 12106 SE 21st AND 2120 SE BOBWHITE AND ENTERING THE SAME ON THE DOCKET OF CITY LIENS PURSUANT TO MILWAUKIE MUNICIPAL CODE SECTION 8.04.200 (D)

WHEREAS, notice of a nuisance was issued and posted on the property located at 12106 SE 21st and 2120 SE Bobwhite, Milwaukie, Oregon on August 14, 2003; and

WHEREAS, the property owner or person in charge of the property did not abate the property or file a protest to the notice of a nuisance within ten days of the posting; and

WHEREAS, the City abated the nuisance after first obtaining a warrant to enter the property to do so; and

WHEREAS, the City has maintained an accurate accounting of the costs of abatement, including administrative overhead; and

WHEREAS, on August 27, 2003 the City forwarded to the owner or person in charge a notice of the abatement costs in compliance with Milwaukie Municipal Code Section 8.04.200 (A) et seq; and

WHEREAS, there has been no objection filed to the abatement costs within (10) days after the date of the notice nor have the costs of the abatement been paid within thirty (30) days from the date of the notice.

NOW, THEREFORE BE IT RESOLVED, BY THE CITY COUNCIL, CITY OF MILWAUKIE, STATE OF OREGON, that, pursuant to Milwaukie Municipal Code Section 8.04.200 (C):

Section 1. The assessment of the costs for the abatement of the said nuisance, including administrative overhead, is in the amount of $598.20

Section 2. The above assessment of costs shall be entered in the docket of city liens.

Section 3. This resolution is effective immediately upon adoption.

IT IS FURTHER RESOLVED THAT the City may also record the lien as a lien in the County lien records.

Introduced and adopted by the City Council on _____.

_____
James Bernard, Mayor

ATTEST:

_____
Pat DuVal, City Recorder

APPROVED AS TO FORM:

_____
Ramis, Crew, Corrigan & Bachrach LLP

Milwaukie Police Department

To: Mayor Bernard and Milwaukie City Council

Through: Mike Swanson, City Manager

From: Larry R. Kanzler, Chief of Police

Date: September 5, 2003

Subject: **O.L.C.C. Application – Libbies Too – 11094 S.E. Main Street**

Action Requested:

It is respectfully requested the Council approve the O.L.C.C. Application To Obtain A Liquor License from Libbies Too – 11094 S.E. Main Street.

Background:

We have conducted a background investigation and find no reason to deny the request for liquor license.

To: Mayor and City Council

Through: Mike Swanson, City Manager

From: JoAnn Herrigel, Program Administrator

Subject: Electric Lightwave LLC. Franchise

Date: September 22, 2003

Action Requested
Approve an ordinance granting a ten-year, nonexclusive franchise to Electric Lightwave LLC. (ELI) to operate as a telecommunications provider within the City of Milwaukie and authorizing the City Manager to sign a franchise agreement with Electric Lightwave LLC.

Background
The City entered into negotiations with ELI in February of 2003. In March of 2003, Council approved an extension of the ELI franchise to allow additional time for staff and ELI to complete negotiations. The term of the extension lapses on October 31, 2003.

City staff and representatives of ELI have agreed upon the franchise language in Attachment A. Major elements of the franchise include:

- A 10 year term which expires on October 31, 2013

- Payment to the City of the greater of a minimum franchise fee of $1,000 per quarter or the sum equal to 5 percent of the gross revenue generated within the City by ELI from customers within the City.

ELI is currently involved in two legal actions regarding the payment of franchise fees to municipalities. In order to move forward with this agreement, the City and ELI have agreed that ELI shall pay the franchise fee stated in this agreement but may reserve its rights to challenge the

appropriateness of the franchise fee and seek a refund or credit to the extent the fee being charged exceeds what is allowed by law.

- A requirement of a $25,000 bond

Concurrence
Legal Counsel concurs with this staff report.

Fiscal Impact
The City will collect a 5% franchise fee from ELI on all revenues generated in the City of Milwaukie. In 2002, franchise fees from ELI amounted to approximately $9,500.

Work Load Impacts
None.

Alternatives
Deny approval of the ordinance granting ELI a 10-year franchise and request that staff pursue additional franchise extensions.

ORDINANCE NO._____

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, GRANTING ELECTRIC LIGHTWAVE, LLC. A NONEXCLUSIVE FRANCHISE FOR TEN YEARS TO OPERATE AS A TELECOMMUNICATIONS PROVIDER WITHIN THE CITY OF MILWAUKIE AND AUTHORIZING THE CITY MANAGER TO SIGN A FRANCHISE AGREEMENT WITH ELECTRIC LIGHTWAVE LLC. IN SUBSTANTIALLY THE FORM OF EXHIBIT A.

WHEREAS, Electric Lightwave LLC.("ELI") has been providing telecommunication services within the City of Milwaukie pursuant to an existing franchise that is set to expire on October 3,1 2002;

WHEREAS, the City has the authority to regulate the use of rights of way within the City and to charge for the use of those rights of way, and

WHEREAS, the City and ELI both desire ELI to continue to provide telecommunications service within the City of Milwaukie and to establish the terms by which ELI shall use rights of way within the City;

NOW THEREFORE, THE CITY OF MILWAUKIE DOES HEREBY ORDAIN:

The City hereby grants to Electric Lightwave LLC. a non-exclusive franchise on the terms and conditions in the attached Exhibit "A", for a period of ten years from the effective date of this ordinance, to provide telecommunications service within the City of Milwaukie and authorizes the City Manager to sign a franchise agreement with Electric Lightwave LLC. in substantially the form of Exhibit A.
.

Read the first time on _____, and moved to second reading by _____vote of the City Council.

Read the second time and adopted by the Council on _____.

Signed by the Mayor on _____.

_____
James Bernard, Mayor

ATTEST:

_____
Pat DuVal, City Recorder

APPROVED AS TO FORM:
RAMIS, CREW, CORRIGAN &
BACHRACH, LLP

_____
City Attorney

Attachment A

Franchise Agreement
between
Milwaukie, Oregon and Electric Lightwave LLC.
October 2003

Section 1. **Rights Granted**

A. The City of Milwaukie ("City") grants to Electric Lightwave LLC. ("ELI"), its successors and assigns, subject to the terms and conditions in this ordinance, a nonexclusive franchise to operate as a competitive telecommunications provider as defined by ORS 759.005 within the City as it now exists or may be extended in the future. The franchise includes the privilege, consistent with the terms of this ordinance, to install, maintain and operate poles, wires, fixtures, equipment, underground circuits necessary to supply telecommunications services, upon, over, along, under, and across the streets, alleys, roads and other public ways, parks and places. Nothing in this agreement limits the City from granting others the right to carry on activities similar to or different from the ones described in this agreement.

B. All facilities in possession of ELI currently located within rights of way are covered by this agreement and are deemed lawfully placed in their current locations. The City may require relocation as further specified in Section 7 of this agreement.

Section 2. **Term**

This agreement shall be effective as of October 31, 2003 and shall remain effective through October 31, 2013 unless sooner terminated as provided in this agreement.

Section 3. **Construction Work**

A. Before ELI conducts work involving excavation, new construction including placement of new wires or major relocation work in public rights of way, property or places, ELI shall first notify the City Engineer and shall comply with any special conditions relating to scheduling, coordination and public safety as determined by the City Engineer. Special conditions would include work being done in the right of way by the City or other third parties and may include a requirement that the facility be placed underground. Work could include open cuts, boring, excavations, digging new pole holes in streets or sidewalks in the right of way. In emergencies, ELI may conduct emergency work at any time and must provide the City Engineer with written or oral notice of emergency work as

soon as reasonably possible, no later than five (5) business days after the emergency work has commenced.

B. The Company shall file preliminary maps or drawings of its proposed construction work within the City with the City Engineer showing the location of the construction, extension or relocation of its facilities and services in public rights of way, property or place of the City. In emergencies, ELI will provide the City Engineer a map of any excavations, repavings, and new facilities conducted on an emergency basis within 30 days of completion of the work. No facility may be placed other than in a location approved by the City, except in the event of an emergency.

C. **Reasonable care.** All work by ELI within the rights of way shall be conducted with reasonable care and with the goal of eliminating or minimizing the risk to those using City rights of way and to eliminate or minimize the risk of damage to public or private property. All work shall be performed in accordance with all applicable laws and regulations. Any work within the right of way may be inspected by the City and its officers to determine whether it has been placed in its approved location. If emergency work has been done and is determined to be in a place not approved by the city, the City will notify ELI and give 60 days for the work to be corrected once the emergency has passed.

Section 4. **Supplying Maps**

ELI shall maintain maps and data pertaining to its facilities located as described in Section 1 (A) in the City on file at their Vancouver, Washington office. With 24 hours prior notice, the City may inspect the maps at any time during business hours. Upon request of the City and without charge, ELI shall furnish current maps to the City, either in a printed form, or, if the City maintains compatible data base capability, then by electronic data in read-only format, showing the location of any electrical system facilities, but not other proprietary information, used in operating ELI's transmission and distribution facilities within the City's Urban Growth Boundary area served by ELI. The City will not sell or transmit ELI maps or data to third parties unless permitted by ELI. The City will make available to ELI any City-prepared maps or data.

Section 5 **Excavation**

Subject to Sections 3 and 6 of this agreement, ELI may make all necessary excavations within any right of way for the purpose of installing, repairing or maintaining any facility. Assuming sufficient right of way, all poles shall be placed between the sidewalk and the edge of the right of way unless another location is approved by the City Engineer. ELI shall take all reasonable precautions to minimize interruption to traffic flow, damage to property or creation of a hazardous condition.

Section 6. **Restoration after Excavation**

Except as otherwise provided in this section, ELI shall restore the surface of any right of way disturbed by any excavation by ELI to the same condition it was in prior to its excavation. In the event that ELI's work is coordinated with other construction work in the right of way, the City Engineer may excuse ELI from restoring the surface of the right of way, providing that as part of the coordinated work, the right of way surface is restored at least to the condition it was in prior to any excavation. All restoration of right of way surface shall be subject to the approval of the City Engineer, who may issue an order requiring correction of the restoration work. If the correction order is not complied with within 30 days or such other time as may be specified in the order, the City may restore the surface of the right of way, in which case ELI shall pay the City for the cost of resurfacing, including all administrative costs of resurfacing and of issuing the correction order.

Section 7. **Relocation**

A. **Permanent Relocation - General**. In accordance with ORS 221.420, City may by written order require ELI to move any facility in the right of way. If the relocation is the result of a public project, ELI shall be responsible for the costs of relocation. If the relocation is required to accommodate a private party development or project, ELI shall have the right to seek reimbursement from the private party. In such event the City shall not be responsible for the costs of relocation of any of ELI's facilities.

B. **Permanent Relocation - Under grounding.** As permitted by law, administrative rule, or regulation, the City may require ELI to remove any overhead facilities and replace those facilities within underground facilities at the same or different locations subject to ELI's engineering and safety standards. The expense of such a conversion shall be paid by ELI, and ELI shall recover its costs of from its customers in accordance with state law, administrative rule, or regulation. Nothing in this paragraph prevents the City and ELI from agreeing to a different form of cost recovery consistent with applicable statutes, administrative rules, or regulations on a case-by-case basis.

C. **Temporary Relocation at Request of Third Parties**. Whenever it is necessary to temporarily relocate or rearrange any facility of ELI to permit the passage of any building, machinery or other object, ELI shall perform the work on 30 business days written notice from the persons desiring to move the building, machinery or other object. The notice shall: (1) bear the approval of the City Engineer; (2) detail the route of movement of the building, machinery, or other object; (3) provide that the person requesting the temporary relocation shall be responsible for ELI's costs; (4) provide that the requestor shall indemnify and hold harmless the City and ELI from any and all damages or claims resulting either from the moving of the building, machinery or other object or from the temporary relocation of ELI facilities; and (5) be accompanied by a cash deposit

or other security acceptable to ELI for the costs of relocation. ELI in its sole discretion may waive the security. The cash deposit or other security shall be in an amount reasonably calculated by ELI to cover ELI's costs of temporary relocation and restoration.

D. **Temporary Relocation at Request of City.** In accordance with ORS 221.420, the City may require the Company to remove and relocate transmission and distribution facilities maintained by the Company in any public rights of way, property or place of the City by giving notice to the Company. Prior to such relocation the city agrees to provide a suitable location which includes a minimum or maximum square footage set by the Company and the required easements from private property owners for such relocated facilities sufficient to maintain service. The cost of removal or relocation of its facilities for public projects shall be paid by the Company; however when the City requires more than one temporary relocation and both the initial and subsequent relocations are for public projects and not at the request of or to accommodate a private party, the initial relocation shall be at the expense of the Company and subsequent relocations occurring less than two years after the initial relocation shall be at the expense of the City. In the event that any relocation is requested by or is to accommodate a private party, ELI shall seek reimbursement from the private party and not from the City. The City and the Company agree to cooperate to minimize the economic impact of such temporary relocation on each party.

E. **Notice**. The notice required by Section 7 (A), (B), (C) and (D) shall be in writing and shall be provided at least 30 business days before the date that ELI is required to move its facilities. The City will endeavor to provide as much notice as possible. The notice shall specify the date by which the existing facilities must be removed. Nothing in this provision shall prevent the City and ELI from agreeing, either before or after notice is provided, to a schedule for relocation. In the event that ELI fails to comply with a notice to relocate and the City and ELI have not reached agreement on a schedule for relocation, the City may remove or relocate ELI's facilities that were the subject of the relocation notice at ELI's expense.

F. **Location for Relocated Facilities**. The City shall provide ELI with a suitable location in existing right of way sufficient to maintain service for all facilities required to be relocated pursuant to Section 7 (A), (B), and (D).

Section 8. **City Public Works and Improvements**

Nothing in this agreement shall be construed in any way to prevent the City from excavating, grading, paving, planking, repairing, widening, altering, or doing any work that may be needed or convenient in any rights of way. The City shall coordinate any such work with ELI to avoid, to the extent reasonably foreseeable, any obstruction, injury or restrictions on the use of any of ELI's facilities.

Section 9. **Payment by ELI for Use of Rights of Way**

A. In consideration for its use of rights of way and for the City's administration of the rights of way, ELI agrees to pay the City the greater of a minimum franchise fee of $1,000 per quarter or the sum equal to 5 percent of the gross revenue generated within the City by ELI from customers within the City. Gross revenue is defined here as monthly service charges paid by customers within the city, the full amount of charges for separately charged transmissions originating and received within the City, half the amount of separately charged transmissions that either originate or are received within the City, any amounts received for the rental of facilities within the right-or-way, and any other amounts received by the franchisee for services (including resale services) provided by the franchisee that use facilities within the right of way.

B. ELI shall pay the franchise fee quarterly on or before 45 days after the preceding quarter. Payments shall be accompanied by a statement of how the total due amount was calculated. Interest on late payments shall accrue from the due date at a rate equal to the prime rate of interest and shall be computed based on the actual number of days elapsed from the due date until payment. Interest shall accrue without regard to whether the City has provided notice of delinquency. However, should payment be insufficient due to an error in computation, interest payments shall not begin to accrue until after the discovery of the error by ELI or receipt by ELI of notice of the error.

D. The City may audit ELI at any time while this agreement is in effect to determine the accuracy of the reporting of gross revenues. ELI shall make all records available to the City and any auditor retained by the City on demand. Any difference of payment due the City following audit shall be payable within thirty (30) days after written notice to the Grantee, and shall bear interest at the rate of 9 per cent per annum. In the event the audit discloses that Grantee has underpaid by more than 2% of its annual payment obligation, Grantee shall pay the City's expenses of performing the audit.

E. The City shall retain the right, as permitted by Oregon Law, to charge a privilege tax in addition to the franchise fee set forth herein. The City agrees to notify ELI of the privilege tax in writing, 60 days prior to the date the tax goes into effect.

F. In consideration of ELI's agreement to pay the franchise fee and the City's Public Utilities Privilege Tax, if implemented, the City shall not impose other business license fees or taxes on the Company during the term of this ordinance. This provision does not exempt the property of the company from lawful ad valorem taxes, local improvement district assessments, or conditions, exactions, fees and charges that are generally applicable to businesses within the City as required by city ordinance.

G. The obligation to pay the franchise fee imposed by Section 9 (A) shall survive expiration of this agreement as long as ELI continues to exercise the rights granted in section (1). In the event this agreement is terminated before expiration, ELI shall pay the City the franchise fee based on gross revenue through the date of termination within 90 days of the termination date.

H. ELI shall be responsible for all costs associated with its work and facilities in the right of way, except as otherwise specifically provided in this agreement.

Section 10. **Performance Bond**

ELI shall provide the City with a performance bond of $25,000 as security for the full and complete performance of this franchise, including costs, expenses, damages or loss the City pays or incurs because of any failure attributable to the grantee to comply with any codes, ordinances, rules, regulations, administrative rules or permits of the city.

Section 11. **Vacation of Right of Way**

Whenever the City initiates any proceeding to vacate any rights of way within which ELI has a facility, the City will notify ELI. The City will maintain a public utility easement for ELI's facility, if requested by ELI.

Section 12. **Use of ELI Facilities by Wireless Communications Facilities**

ELI shall allow third parties to place wireless communications facilities on ELI poles provided that (1) the placement will not interfere with ELI's operations, (2) the placement and operations of the wireless communications facilities will be consistent with all safety and other applicable regulations, and (3) ELI agrees to the amount of compensation from the third party. The third party shall be contractually responsible for compliance with all safety and other applicable regulations. ELI may extend any existing pole to allow such co-location, consistent with the City's regulations of wireless communications facilities. The City shall have no liability arising from the co-location of third party facilities on ELI poles.

Section 13. **Termination**

A. **By City for Nonpayment**. City may terminate this agreement and ELI's franchise if ELI fails to pay the franchise fee. The City shall provide 30 days' notice of termination prior to any termination for non-payment. The agreement shall not be terminated if ELI pays the full amount, including interest, within 30 days of the notice.

B. **By City for Cause.** If ELI ceases to maintain its facilities and the lack of

maintenance increases the risk of personal injury or property damage, the City may terminate this agreement by providing ELI 30 days' notice of termination. The agreement shall not be terminated if ELI substantially eliminates such risk within 30 days of the notice.

Section 14. **Sale of Franchise**

ELI shall not sell or assign this franchise without the prior written consent of the City. ELI shall notify the City not later than 60 days prior to any intended transfer and the City will not unreasonably withhold any consent required.

Section 15. **Removal of Facilities**

If this agreement is terminated or expires on its own terms and is not replaced by a new franchise agreement or similar authorization, ELI and the City shall by mutual agreement decide whether ELI's facilities are to be removed or remain in place. In the event that ELI and the City are unable to reach agreement on the disposition of ELI facilities after termination, the City Engineer may issue an order requiring removal.

Section 16. **Hold Harmless**

ELI shall indemnify and hold harmless the City, its public officials and employees against any and all claims, damages, costs and expenses to which they may be subjected as a result of any negligent or wrongful act or omission of ELI, or any act or omission of ELI that is alleged to be negligent or wrongful, under this agreement or otherwise arising from the rights and privileges granted by this agreement. The obligations imposed by this section are intended to survive termination of this agreement.

Section 17. **Insurance**

ELI shall, as a condition of the franchise grant, secure and maintain the following liability *insurance* policies insuring both the grantee and the city, and its elected and appointed officers, officials, agents and employees as coinsured:

1. Comprehensive general liability *insurance* with limits not less than:
   a. Three million dollars for bodily injury or death to each person;
   b. Three million dollars for property damage resulting from any one accident; and,
   c. Three million dollars for all other types of liability.
2. Automobile liability for owned, non-owned and hired vehicles with a limit of one million dollars for each person and three million dollars for each accident.
3. Worker's compensation within statutory limits and employer's liability *insurance* with limits of not less than one million dollars.

4. Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than three million dollars.

5. The liability *insurance* policies required by this section shall be maintained by the grantee throughout the term of the telecommunications franchise, and such other period of time during which the grantee is operating without a franchise hereunder, or is engaged in the removal of its telecommunications facilities.

Section 18. **Limitation on Privileges**

All rights and authority granted to ELI by the City are conditioned on the understanding and agreement that the privileges in the rights of way are not to operate in any way so as to be an enhancement of ELI's properties or values or to be an asset or item of ownership in any appraisal thereof.

Section 19. **Effect of Invalidity of a Portion of this Agreement**

If any section, subsection, sentence, clause, phrase, or other portion of this ordinance is, for any reason, held to be invalid or unconstitutional by a court of competent jurisdiction, all portions of the agreement that are not held to be invalid or unconstitutional shall remain in effect until the agreement is terminated or expired. After any declaration of invalidity or unconstitutionality of a portion of this agreement, either party may demand that the other party meet to discuss amending the agreement to adjust the relationship of the parties to conform to their original intent in entering into this agreement. If the parties are unable to agree on a revised franchise agreement within 90 days after a portion of the agreement is found to be invalid or unconstitutional, either party may terminate the agreement on 180 days' notice to the other party.

Section 20. **Reservation of Rights**

The parties acknowledge that the law surrounding municipal franchises is unsettled. ELI has specifically challenged the appropriateness of the City's franchise fee under Section 253 of the Federal Telecommunications Act of 1996. The City and ELI do not agree on whether the fee specified in this franchise is appropriate under the law. In order to move forward with this agreement, the City and ELI have agreed that ELI shall pay the franchise fee stated in this agreement but may reserve its rights to challenge the appropriateness of the franchise fee. To the extent a federal court issues a final, non-reviewable order which addresses the appropriateness of franchise fees for telecommunications companies, ELI will be allowed to challenge the City's franchise fee and seek a refund or credit to the extent the fee being charged exceeds what is allowed by law. The parties agree to negotiate in good faith to resolve such a fee dispute. If agreement cannot be reached by the parties within sixty (60) days, ELI may seek relief from any court of competent jurisdiction.

Section 21. **Definitions**

A. "Facility" includes any poles, guy wires, anchors, wires, fixtures, equipment, conduit, circuits, vaults, ground mounted switch cabinets, ground mounted mineral oil filled transformers, ground mounted secondary junction cabinets, and other property necessary or convenient to the supply of electric energy owned or operated by ELI within the City.

B. "Right of way" means any right of way or public utility easement within the City and under City ownership, control or administration. "Right of way" does not include any state highway or county road.

C. "Install" means to erect, construct, build, replace or place.

D. "Gross revenue" includes monthly service charges paid by customers within the city, the full amount of charges for separately charged transmissions originating and received within the City, half the amount of separately charged transmissions that either originate or are received within the City, any amounts received for the rental of facilities within the right-or-way, and any other amounts received by the franchise for services (including resale services) provided by the franchisee that use facilities within the right of way.

E. "Public project" means any project for work in the right of way that is not undertaken to benefit a specific development or redevelopment project on private property and that is not undertaken to benefit a public utility or utility service provider other than the City.

Authorized Signature: **The City of Milwaukie**

BY: _____

TITLE: _____

DATE: _____

Authorized Signature: **Electric Lightwave LLC.**

BY: _____

TITLE: _____

DATE: _____

To: **Mayor and City Council**

Through: **Alice Rouyer, Community Development and Public Works Director**

From: **Tom Larsen, Building Official**

Subject: **Intergovernmental Agreement for Shared Building Inspection Services**

Date: **September 22, 2003 for the October 7, 2003 Meeting**

Action Requested

Adopt a resolution authorizing the City Manager to sign Intergovernmental Agreements, allowing the temporary or long term sharing of Building Inspection staff with other jurisdictions in the Metro area.

Background

From time to time it becomes necessary for the Building Official to employ outside inspection staff to cover vacations, sick time and heavy inspection days. The pool of qualified individuals is limited and the hiring of additional staff can be difficult. The proposed standard IGA will allow the City of Milwaukie to temporarily use, when available, qualified individuals from other jurisdictions to perform backup inspections, thus reducing dependence on private contractors. Likewise, through the IGA, Milwaukie's Building Official could be available to temporarily cover inspections for other jurisdictions. Staff is requesting Council authorize the City Manager to sign the standard agreement with other jurisdictions.

Concurrence

The City Manager, Community Development Director, City Attorney, Human Resources Director, and Risk Manager have reviewed and approved the IGA.

Fiscal Impact

The cost of using inspectors from other jurisdictions would be less expensive than using outside contractors. If the City were to provide back-up inspections for another jurisdiction, it is very likely that it will result in a net revenue gain to the City.

Work Load Impacts

Any increase in staff workload would be offset by increased revenue to the Department. When workloads do not permit sending the Building Official to another jurisdiction, the IGA allows the City to decline the request.

Alternatives

1. Authorize the City Manager to enter into Intergovernmental Agreements with other jurisdictions, in substantially the same form as Exhibit A.
2. Amend the IGA.
3. Take no action.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO ENTER INTO INTERGOVERNMENTAL AGREEMENTS WITH OTHER JURISDICTIONS IN THE TRI-COUNTIES AREA, FOR THE SHORT OR LONG TERM SHARING OF BUILDING INSPECTION STAFF, ON AN AS-NEEDED BASIS.

WHEREAS, All local Building Departments experience varying levels of activity during each year; and

WHEREAS, Hiring additional staff during peak seasons and laying them off during slow periods is problematic; and

WHEREAS, The pool of qualified individuals is limited;

NOW, THEREFORE, BE IT RESOLVED that The City Manager, with input from the Building Official, has the authority to sign Intergovernmental Agreements with other jurisdictions in the Tri-Counties area, for the short or long term sharing of Building Inspection Staff, on an as-needed basis.

Introduced and adopted by the City Council on .

This resolution is effective on .

_____
James Bernard, Mayor

ATTEST:

APPROVED AS TO FORM:
Ramis, Crew, Corrigan & Bachrach, LLP

_____
Pat DuVal, City Recorder

_____
City Attorney

Document2 (Last revised)

EXHIBIT A

Intergovernmental Agreement
For provision of
Land Development and Building Inspection Services

This Agreement is entered into by and between _____(A political subdivision of the State of Oregon)and the following cities, each of which is an Oregon municipal corporation:

_____

_____

_____

_____

_____

_____.

RECITALS

A. ORS 190.010 authorizes and allows the parties to this Agreement to perform the functions and activities that another party to this Agreement has authority to perform.

B. Each of the parties have staff who provide land use and building inspection services for their respective jurisdictions.

C. With the fluctuations in development and construction activity in the Greater Portland Metropolitan Area the parties have experienced variations in demand for land use and building inspection services over the course of the last few fiscal years and the parties believe it may be more cost effective and better serve the public to share experienced staff of another jurisdiction rather than independently hiring additional staff.

AGREEMENT

Now, therefore, based on the foregoing, the signatories agree as follows:

1. Definitions. As used herein, the following words and phrases mean:

1.1. "Borrowing Party" is the governmental entity requesting and obtaining staff assistance from another signatory to this Agreement.

1.2. "Land Development and Building Inspection Services" (LDBIS) are services related to the issuance of permits under the provisions of ORS Chapters 197, 215, 227 or 455.

1.3. "Originating Party" is the entity loaning one or more of its employees to another signatory for staff assistance related to LDBIS.

1.4. "Reimbursement Costs" are those charges related to a Shared Employee as set forth in a fee schedule adopted by an Originating Party. The charges shall be set out as an hourly rate, including but not limited to, costs relating to salary, payroll and other taxes, medical, dental and other insurance for said Shared Employee, employer-paid retirement contributions for said employee, vacation, sick leave and other benefit(s) which are part of the compensation package for the Shared Employee(s) for the Originating Party.

1.5. "Shared Employee" is the Originating Party's employee loaned to a Borrowing Party under this Agreement.

2. Requested Use of Shared Employees. Each Party to this Agreement shall make available its employees providing LDBIS, to the extent these employees are (in the opinion of the Originating Party) available for loan. The Borrowing Party shall inform the Originating Party, that it desires staff assistance related to LDBIS from of the Originating Party stating the number of positions and the minimum qualifications of the staff requested. The request shall also set out when the Shared Employee would be needed and an estimate of the duration for the need.

3. Response to Request for Use. The Originating Party shall promptly provide Borrowing Party with the name(s) of employee(s) that are available and a brief description of the employees' qualifications. It shall be in the sole discretion of the Originating Party to select the employees subject to this Agreement. This process is to be quick and responsive such that a Borrowing Party may make a request in the morning and be lent a Shared Employee that same day.

4. Payment for Use of Shared Employee. Not later than thirty (30) of the end of Shared Employee(s) service to the Borrowing Party, the Originating Party shall provide Borrowing Party with an invoice for the Reimbursement Costs of each Shared Employee. The invoice shall reflect the number of hours worked times the hourly rate defined above at subsection 1.4. The Borrowing Party shall pay Originating Party the amount billed within sixty (60) days of receiving the invoice.

5. Duration of Use of Shared Employee. Borrowing Party shall attempt to use Shared Employee for the duration specified in its request. If a Shared Employee is requested for a period longer than one (1) month and is not needed for the entire period, Borrowing Party shall give Originating Party seven (7) calendar days' notice of its intent to return Shared Employee. In that case, Borrowing Party shall be liable for Shared Employee(s)' Reimbursement Cost for the seven (7) day notice period, unless the two parties otherwise agree. A Borrowing Party shall not retain a Shared Employee longer than six (6) consecutive months under this Agreement.

6. Status of Shared Employee. A Shared Employee shall:

6.1. Account for the number of hours in service to a Borrowing Party;

6.2. Remain an employee of the Originating Party continuing to be paid and receiving employee benefits therefrom without entitlement or claim to any salary, compensation or other benefits from the Borrowing Party;

6.3. Continue working the number of hours specified in his or her contract of employment with the Originating Party while loaned to a Borrowing Party, unless the Originating Party, Borrowing Party and the Shared Employee agree otherwise;

6.4 In the event of any dispute between the Shared Employee and Borrowing Party about the performance of services under this Agreement, Shared Employee shall be subject to the exclusive direction and control (including personnel actions and discipline) of the Originating Party.

7. Obligations of Borrowing Party. If the Shared Employee does not meet the needs or is otherwise not satisfactory to Borrowing Party, Borrowing Party's sole recourse shall be the return of Shared Employee to Originating Party. The Borrowing Party shall provide a written explanation to the Originating Party for the return of the Shared Employee(s). Borrowing Party shall provide a Shared Employee with all material(s) and work space necessary to perform the requested LDBIS.

8. Obligations of Originating Party. In addition to its other obligations set out elsewhere in this Agreement, the Originating Party shall be responsible for provision of any official motor vehicle necessary for performance of services by a Shared Employee.

9. General Provisions.

9.1. Compliance with Laws. Every party shall comply with all applicable federal, state and local laws, including those related to discrimination in employment because of race, color, ancestry, national origin, religion, sex, sexual orientation, marital status, age, medical condition or disability and all applicable laws and regulations regarding the handling and expenditure of public funds.

9.2 Oregon Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Oregon.

9.3 Time is of the Essence. Time is of the essence in the performance of this Agreement.

9.4 Default. A party shall be deemed in default if it fails to comply with any provision of this Agreement. A non-defaulting party shall provide defaulting party written notice of the default and an explanation thereof and allow the defaulting party thirty (30) days within which to cure.

9.5 Indemnification. Each Entity in its capacity as an Originating Party hereby agrees to indemnify, defend and hold harmless those entities acting as Borrowing Parties(including their officers, employees and agents) from and against all claims, demands and causes of actions and suits of any kind or nature made by a third party for personal injury, death or damage to property arising out of the service(s) performed by the Originating Party its, officers, employees(including Shared Employees) and agents pursuant to the terms of this Agreement. Each party shall give the other parties to this Agreement notice of any claim made or case filed that relates to this Agreement or services performed hereunder

9.6. Insurance. Each party agrees to maintain liability and workers compensation insurance in accordance with statutory requirements at levels necessary to protect against liabilities allowed by law. Each Originating Party shall maintain workers compensation coverage for any Shared Employee loaned under this Agreement.

9.7. Modification. No waiver, consent, modification or change of terms of this Agreement shall be binding unless in writing and signed by all parties.

9.8. Dispute Resolution. The parties shall first attempt to informally resolve any dispute concerning this Agreement. A neutral party may be used to facilitate those negotiations. In the event of an impasse, the issue shall be submitted to the governing bodies or a recommendation or resolution.

9.9. Enforcement. Subject to the provisions in paragraph 9.6, any party may institute legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation of this Agreement.

9.10 Excused Performance In addition to the specific provisions of this Agreement, performance by any party shall not be in default where delays or default is due to war, insurrection, strikes, walkouts, riots, floods, drought, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by governmental entities other than the parties, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation or similar bases for excused performance that are not within the reasonable control of the party to be excused.

9.11 Termination. A party may terminate its participation in this Agreement, with or without cause and at any time, by providing thirty (30) days written notice to the other parties to this Agreement.

9.12. Severability. If any one or more of the provisions contained in this Agreement is invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of the Agreement will not be affected or impaired in any way.

9.13. Entire Agreement. This Agreement is the entire agreement of the parties on its subject and supersedes any prior discussions or agreements regarding the same subject.

10. Term of Agreement. This Agreement is for a term of ten (10) years from the date of the party's execution of the Agreement.

11. Contact Persons. Communications about this Agreement and any notice sent under its terms shall be sent by and to the following contact persons for the respective parties:

Jurisdiction	Contact Person	Address

12. Appropriations Clause. The obligations of the parties are subject to appropriations by their governing bodies. This Agreement is subject to the debt limitations in Oregon Constitution, Article XI, section 10 and any debt limitations contained in a city charter.

_____
Jurisdiction

_____ _____
Signature Date

_____ _____
Printed Name Title

Address: _____

_____
Jurisdiction

_____ _____
Signature Date

_____ _____
Printed Name Title

Address

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Jurisdiction

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Signature Date

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Printed Name Title

Address: _____

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Jurisdiction

_____ _____
Signature Date

_____ _____
Printed Name Title

Address: _____

To: Mayor and City Council

Through: Mike Swanson, City Manager
Alice Rouyer, Community Development/Public Works Director

From: Paul Shirey, Director of Engineering
Brion Barnett, Civil Engineer

Subject: McLoughlin Boulevard Improvements Project, Intergovernmental Agreement (IGA) for Right-of-Way Acquisition and a resolution to allow for condemnation if necessary

Date: September 24, 2003 for the October 7 meeting

Action Requested

Authorize the Mayor to sign documents for the McLoughlin Boulevard Improvements Project, from SE Harrison Street to the Kellogg Creek Bridge, as follows:

- An IGA with the Oregon Department of Transportation (ODOT) for right-of-way (ROW) acquisition (see Attachment A).
- A resolution authorizing the City of Milwaukie and its ROW agent (ODOT) to use condemnation, if necessary, to acquire property for the project (see Attachment B).

Background

During the April 16, 2002 Council meeting, Council authorized the Mayor to sign a Local Agency Agreement (LAA) with the Oregon Department of Transportation (ODOT) outlining terms and conditions for use of the $1.9 million in federal funding for the McLoughlin Boulevard Improvement Project. The LAA enabled the City to enter into a separate agreement with David Evans and Associates in August 2003 to complete the preliminary engineering (PE) phase of the project.

Per the adopted Downtown and Riverfront Plan, the scope of the project calls for widening the existing roadway to the west/river side and implementing boulevard improvements (wide sidewalks, street trees, lighting improvements, etc). Over the last

several years, the City previously acquired some properties on the west/river side of the roadway for the future riverfront park. The only two non-City properties that remain on the west side of the roadway are Vic's Tavern and the Milwaukie Antique Mall. The Vic's Tavern and Antique Mall properties will need to be acquired in this process due the need to expand the right-of-way (ROW) on the west side of the roadway approximately ten feet into both respective buildings. Project impacts to the east side of the roadway will require some temporary construction easements, permanent easements for increased curb radii at intersections, and potential impacts to existing driveway access points (no known closures, but potential driveway size modifications).

It should be noted that the City's Historic Resources Property List (Appendix 1 of the Comprehensive Plan) does not list either Vic's Tavern or the Antique Mall as locally significant properties. However, when a property is 50 or more years old, it is considered "potentially" eligible for historic listing by ODOT. Within the project limits (Harrison Street to the Kellogg Creek Bridge), only Vic's Tavern and the Hair Salon across the street (1906 SE Monroe Street) are both potentially eligible. In preparation for the design of the boulevard improvements, the City hired a local archaeological consultant to determine whether Vic's or the Hair Salon is eligible for historic listing. The consultant prepared a report documenting their findings and determined that neither property is historically significant (ODOT reviewed the report and concurred).

Due to the complexity of the ROW acquisitions and the fact that the existing roadway ROW is under ODOT jurisdiction, the City proposes to have ODOT represent the City for the ROW acquisition process (see Attachment A). As a normal part of the ROW acquisition process, ODOT will act as the City's agent and negotiate with respective property owners as to the compensation to be paid for the acquisition of each property. In the event that no satisfactory agreement can be reached, ODOT will use condemnation (legal proceedings) to reach an agreement so that the project can move forward. The City Attorney has drafted a resolution (see Attachment B) outlining the process used for ROW acquisitions, including condemnation if necessary.

In the coming months, the previously signed LAA will need to be amended to allow for use of the previously awarded $2 million in state bond funds (from House Bill 2142, Oregon Transportation Investment Act). These funds were awarded to the City in February 2002. The bond funds will be used to supplement the existing CMAQ funds for the construction phase of the project.

The current project schedule is as follows:

Project Phase	Beginning Date (month, yr.)	Ending Date (month, yr.)
Preliminary & Final Engineering	Sept. 2003	Oct. 2004
Right-of-Way Acquisition	Dec. 2003	Dec. 2004
Construction	April 2005	May 2006

Concurrence

Staff in Community Development, Engineering, the City Attorney's Office, and the City Manager's office have reviewed the proposed Intergovernmental Agreement and resolution and support signing both to proceed with the McLoughlin Boulevard Improvements Project.

Fiscal Impact

Under the CMAQ program, federal funds make up approximately ninety-percent (89.73%) of the project and the city is required to provide a local match of approximately ten-percent (10.27%). Based on the $1.9 million federal CMAQ dollars, staff estimates that the total city match for the project will be approximately $220,000 and will come from the Streets Fund. The match payments will be phased over the course of the project and can therefore be budgeted over two to three fiscal years. Approximately $87,000 in Street Funds were approved for this project in the 2003 budget, and approximately $120,000 in Street Funds is anticipated in the 2004 budget. Local match requirements could change based on ROW and other negotiations.

One fiscal impact issue that was discussed in the budget process last spring was the need to acquire the Vic's Tavern and Antique Mall properties. The federal project grant will only pay for the new ROW and the value of the buildings. The grant will not pay for the value of the remaining land that is not used for the ROW following building demolition. It is expected that this land will transition into property for the City's future riverfront park. In anticipation of this expense, the City budgeted $60,000 from the general fund to cover this one-time cost. The Council approved this as part of the FY 2003/2004 budget.

Work Load Impacts

A staff team from the Engineering and Community Development Departments will assist and/or coordinate with ODOT and local Milwaukie residents and representatives as necessary. The project is part of the work program for both departments.

Alternatives

The Council has the following alternatives:

- Approve resolution and IGA as approved.
- Suggest amendments to the attached documents.
- Do not authorize the Mayor to sign the attached amended Intergovernmental Agreement and resolution to allow for condemnation.

Attachments

Attachment A – ODOT IGA

Attachment B – Resolution for ROW acquisition

INTERGOVERNMENTAL AGREEMENT FOR RIGHT OF WAY SERVICES

THIS AGREEMENT is made and entered into by and between THE STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "ODOT"; the City of Milwaukie, acting by and through its City Council, hereinafter referred to as "Agency".

RECITALS:

1. By the authority granted in ORS 190.110, 283.110, 366.770 and 366.775, state agencies may enter into agreements with units of local government or other state agencies for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.

2. That certain SE McLoughlin Boulevard is a State Highway, under the jurisdiction and control of ODOT, and Agency may enter into an agreement for the acquisition of real property by ODOT. Said real property to be used as part of right of way for road, street or construction of public improvement. Hereinafter, all acts necessary to accomplish services in this Agreement shall be referred to as "project".

NOW THEREFORE, the premises being in general as stated in the foregoing recitals, it is agreed by and between the parties hereto as follows:

TERMS OF AGREEMENT:

1. Under such authority, Agency wishes to retain the services of ODOT to perform the project identified in Recital 2 and shown in Special Provisions Exhibit A, attached hereto and by this reference made a part hereof. Under no conditions shall Agency's obligations for said services exceed a maximum of $ 900,000, including all expenses, unless amended by agreement.

2. The work shall begin on the date all required signatures are obtained and shall be completed no later than June 30, 2006, on which date this Agreement automatically terminates unless extended by a fully executed amendment.

3. The process to be followed by the parties in carrying out this Agreement is set out in the Special Provisions Exhibit A, attached hereto and made a part of this Agreement.

4. It is further agreed both parties will strictly follow the rules, policies and procedures of the "Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970" as amended, ORS 281.060, ORS 35.346, State of Oregon Right of Way Manual, and Federal Highway Administration Federal Aid Policy Guide.

ODOT OBLIGATIONS:

1. ODOT shall perform the work described for it in Special Provisions Exhibit A.

2. With the exception of work related to appraisals, ODOT shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from Agency.

3. ODOT agrees to comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279.312, 279.314, 279.316, 279.320 and 279.555, which hereby are incorporated by reference. Without limiting the generality of the foregoing, ODOT expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659.425; (iv) all regulations and administrative rules established

pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

4. ODOT shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.

5. ODOT, its subcontractors, if any, and all employers working under this Agreement are subject employers under the Oregon Workers Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers.

6. ODOT's right of way contact person for this Agreement is Wayne Kwong (503-731-8439).

AGENCY OBLIGATIONS:

1. Agency shall perform the work described for it in Special Provisions Exhibit A.

2. Agency certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within Agency's current appropriation or limitation of current budget. Agency is willing and able to finance all, or its pro-rata share of all, costs and expenses incurred in the project up to its maximum.

3. Agency's right of way contact person for this Agreement is Paul Shirey (503-786-7601).

PAYMENT FOR SERVICES and EXPENDITURES:

1. In consideration for the services performed by ODOT, Agency agrees to pay or reimburse ODOT a maximum amount of $900,000. Said maximum amount shall include reimbursement for all expenses, including travel expenses. Travel expenses shall be reimbursed to ODOT in accordance with the current State Department of Administrative Services' rates. Any expenditure beyond federal participation will be from, or reimbursed from, Agency funds. Payment in Agency and/or federal funds in any combination shall not exceed said maximum, unless amended by agreement.

2. FOR PROJECTS IN ODOT STIP (STATE TRANSPORTATION IMPROVEMENT PROGRAM): Agency agrees to reimburse salaries and payroll reserves of State employees working on project, direct costs, costs of rental equipment used, and per-diem expenditures.

GENERAL PROVISIONS:

1. This Agreement may be terminated by either party upon 30 days' notice, in writing and delivered by certified mail or in person, under any of the following conditions:

   a. If either party fails to provide services called for by this Agreement within the time specified herein or any extension thereof.

   b. If either party fails to perform any of the other provisions of this Agreement or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice fails to correct such failures within 10 days or such longer period as may be authorized.

   c. If Agency fails to receive funding, appropriations, limitations or other expenditure authority at levels sufficient to pay for the work provided in the Agreement.

d. If Federal or State laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or if Agency is prohibited from paying for such work from the planned funding source.

Any termination of this Agreement shall not prejudice any rights or obligations accrued to the parties prior to termination.

2. Agency acknowledges and agrees that ODOT, the Secretary of State's Office of the State of Oregon, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to the specific agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by ODOT.

3. If federal funds are involved in this Agreement, Exhibits B and C are attached hereto and by this reference made a part of this Agreement, and are hereby certified to by Agency.

4. If federal funds are involved in this Agreement, Agency, as a recipient of grant funds, pursuant to this Agreement with ODOT, shall assume sole liability for Agency's breach of the conditions of the grant, and shall, upon Agency's breach of grant conditions that requires ODOT to return funds to the federal agency, the grantor, hold harmless and indemnify ODOT for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of Agency, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this agreement.

5. This Agreement and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of ODOT to enforce any provision of this Agreement shall not constitute a waiver by ODOT of that or any other provision.

IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their seals as of the day and year hereinafter written.

The Oregon Transportation Commission approved on March 18, 1999, Subdelegation Order No. 4 in which the Director and Executive Deputy Director/Chief Engineer grants authority to the Technical Services Manager to approve and execute all Department real property deeds, contracts, agreements, and other documents pertaining to real property transactions. The Technical Services Manager, by way of Letter of Authority dated January 28, 1999, under its item 6, authorizes the Right of Way Manager to approve and execute agreements with other governmental jurisdictions to employ Right of Way Section staff.

CITY OF MILWAUKIE, BY AND THROUGH ITS
CITY COUNCIL

BY _____
MAYOR

DATE _____

BY _____
CITY RECORDER

DATE_____

APPROVED AS TO FORM:

_____
CITY ATTORNEY
CITY OF MILWAUKIE

DATE _____

STATE OF OREGON,
BY AND THROUGH ITS
DEPARTMENT OF TRANSPORTATION

By _____
DEOLINDA G. JONES
RIGHT OF WAY MANAGER

DATE _____

Department of Justice approval as to legal sufficiency required when amount of funds paid to or from state agency >$100,000. Amounts paid between State agencies is not subject to this requirement.

APPROVED AS TO LEGAL
SUFFICIENCY *(req'rd as noted above)*

_____
ASSISTANT ATTORNEY GENERAL

DATE _____

SPECIAL PROVISIONS EXHIBIT A

THINGS TO BE DONE BY STATE OR AGENCY

A. Preliminary Phase

1. ODOT will provide preliminary right of way cost estimates.
2. Agency will make preliminary contacts with property owners.
3. Agency will gather and provide data for environmental documents.
4. ODOT and Agency will develop access and approach road list.
5. Agency will help provide field location and project data.

B. Acquisition Phase

1. General:

   a. When doing the Acquisition work, ODOT will provide Agency with a status report of the project upon request.

   b. Title to properties acquired shall be in the name of the Agency. That portion of property acquired needed for highway improvement will be transferred to ODOT within one year after completion of the construction project.

   c. Prior to the initiation of acquisitions, Agency will adopt a resolution of intention and determination of necessity in accord with ORS 281.520, authorizing acquisition and condemnation. If the State Department of Justice is to handle condemnation work, that information needs to be included in the resolution adopted by the Agency. Prior approval by Department of Justice is required.

2. Legal Descriptions:

   a. Agency will provide sufficient horizontal control, recovery and retracement surveys, vesting deeds, maps and other data so that legal descriptions can be written.

   b. Agency will provide construction plans and cross-section information for the project.

   c. Agency will write legal descriptions and prepare right of way maps. ODOT will review descriptions and maps prior to the initiation of the acquisition process.

   d. Agency/ODOT will specify the degree of title to be acquired (e.g., fee, easement).

3. Real Property and Title Insurance:

   a. ODOT will provide preliminary title reports, if ODOT determines they are needed, before negotiations for acquisition commence.

   b. ODOT will determine sufficiency of title (taking subject to).

   c. Agency will conduct Level 1 testing for presence of hazardous material.
   Agency will conduct reasonable testing up to Level 2, if requested .
   If contamination is found, a recommendation for remediation will be presented to Agency

   d. Agency will be responsible for any necessary remediation.

4. Appraisal:

   a. ODOT will conduct the valuation process of properties to be acquired.

   b. ODOT will recommend just compensation, based upon a review of the valuation by qualified personnel.

   c. Property trades, construction obligations, and zoning or permit concessions are to be evaluated as part of the Just compensation offer.

5. Negotiations:

   a. ODOT will tender all monetary offers to land-owners in writing at the compensation shown in the appraisal review. Conveyances taken for more than the approved figure will be documented by an Administrative Justification for the increase in compensation. If ODOT performs this function, it will provide the Agency with all pertinent letters, negotiation records and obligations incurred during the acquisition process.

   b. Agency and ODOT shall jointly determine a date for certification of right of way. ODOT agrees to file all Recommendations for Condemnation at least 70 days prior to that date if negotiations have not been successful on those properties.

6. Relocation:

   a. ODOT will perform any relocation assistance, make replacement housing computations, and do all things necessary to relocate any displaced parties on the project.

   b. ODOT will make all relocation and moving payments for the project.

   c. Agency will perform the relocation appeal process.

C. Closing Phase

1. ODOT will submit and Agency will approve all negotiated settlements by accepting the appropriate deeds and/or documentation and endorse obligations to grantors, if any, prior to closing.
2. ODOT will close all transactions, including drawing deeds, releases and satisfactions necessary to clear title, obtaining signatures on release documents, recording appropriate documents and making all payments.

D. Property Management

1. Agency will take possession of all the acquired properties.

E. Condemnation

1. ODOT may offer mediation if parties have reached an impasse.

2. ODOT will perform all administrative functions in preparation of the condemnation process, such as preparing final offer and complaint letters.

3. State will perform all legal work related to the condemnation process. (Approved by the Department of Justice on February 26, 2003).

4. State will perform all litigation work related to condemnation. (Approved by the Department of Justice on February 26, 2003).

EXHIBIT B (Local Agency or State Agency)

CONTRACTOR CERTIFICATION

Contractor certifies by signing this contract that Contractor has not:

(a) Employed or retained for a commission, percentage, brokerage, contingency fee or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit or secure this contract,

(b) agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract, or

(c) paid or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above consultant), any fee, contribution, donation or consideration of any kind for or in connection with, procuring or carrying out the contract, except as here expressly stated (if any):

Contractor further acknowledges that this certificate is to be furnished to the Federal Highway Administration, and is subject to applicable State and Federal laws, both criminal and civil.

AGENCY OFFICIAL CERTIFICATION (ODOT)

Department official likewise certifies by signing this contract that Contractor or his/her representative has not been required directly or indirectly as an expression of implied condition in connection with obtaining or carrying out this contract to:

(a) Employ, retain or agree to employ or retain, any firm or person or

(b) pay or agree to pay, to any firm, person or organization, any fee, contribution, donation or consideration of any kind except as here expressly stated (if any):

Department official further acknowledges this certificate is to be furnished to the Federal Highway Administration, and is subject to applicable State and Federal laws, both criminal and civil.

EXHIBIT C

Federal Provisions
Oregon Department of Transportation

I. CERTIFICATION OF NONINVOLVEMENT IN ANY DEBARMENT AND SUSPENSION

Contractor certifies by signing this contract that to the best of its knowledge and belief, it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency;

2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery falsification or destruction of

records, making false statements or receiving stolen property;

3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

4. Have not within a three-year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default.

Where the Contractor is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

List exceptions. For each exception noted, indicate to whom the exception applies, initiating agency, and dates of action. If additional space is required, attach another page with the following heading: Certification Exceptions continued, Contract Insert.

EXCEPTIONS:

Exceptions will not necessarily result in denial of award, but will be considered in determining Contractor responsibility. Providing false information may result in criminal prosecution or administrative sanctions.

The Contractor is advised that by signing this contract, the Contractor is deemed to have signed this certification.

II. INSTRUCTIONS FOR CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS–PRIMARY COVERED TRANSACTIONS

1. By signing this contract, the Contractor is providing the certification set out below.

2. The inability to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The Contractor shall explain why he or she cannot provide the certification set out below. This explanation will be considered in connection with the Oregon Department of Transportation determination to enter into this transaction. Failure to furnish an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the Department determined to enter into this transaction. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government or the Department may terminate this transaction for cause of default.

4. The Contractor shall provide immediate written notice to the Department to whom this proposal is submitted if at any time the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Department's Program Section (Tel. (503) 986-3400) to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The Contractor agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transactions with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the Department or agency entering into this transaction.

7. The Contractor further agrees by submitting this proposal that it will include the Addendum to Form FHWA-1273 titled, "Appendix B--Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions", provided by the Department entering into this covered transaction without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the

Nonprocurement List published by the U. S. General Services Administration.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government or the Department, the Department may terminate this transaction for cause or default.

III. ADDENDUM TO FORM FHWA-1273, REQUIRED CONTRACT PROVISIONS

This certification applies to subcontractors, material suppliers, vendors, and other lower tier participants.

- Appendix B of 49 CFR Part 29 -

Appendix B--Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this contract, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this contract is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", "proposal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this contract that it will include this clause titled, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement list.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions

a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency.

b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

IV. EMPLOYMENT

1. Contractor warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this contract and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Contractors, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award or making of this contract. For breach or violation of this warranting, Department shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

2. Contractor shall not engage, on a full or part-time basis or other basis, during the period of the contract, any professional or technical personnel who are or have been at any time during the period of this contract, in the employ of Department, except regularly retired employees, without written consent of the public employer of such person.

3. Contractor agrees to perform consulting services with that standard of care, skill and diligence normally provided by a professional in the performance of such consulting services on work similar to that hereunder. Department shall be entitled to rely on the accuracy, competence, and completeness of Contractor's services.

V. NONDISCRIMINATION

During the performance of this contract, Contractor, for himself, his assignees and successors in interest, hereinafter referred to as Contractor, agrees as follows:

1. Compliance with Regulations. Contractor agrees to comply with Title VI of the Civil Rights Act of 1964, and Section 162(a) of the Federal-Aid Highway Act of 1973 and the Civil Rights Restoration Act of 1987. Contractor shall comply with the regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are incorporated by reference and made a part of this contract. Contractor, with regard to the work performed after award and prior to completion of the contract work, shall not discriminate on grounds of race, creed, color, sex or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices, when the contract covers a program set forth in Appendix B of the Regulations.

2. Solicitation for Subcontractors, including Procurement of Materials and Equipment. In all solicitations, either by competitive bidding or negotiations made by Contractor for work to be performed under a subcontract, including procurement of materials and equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under this contract and regulations relative to nondiscrimination on the grounds of race, creed, color, sex or national origin.

3. Nondiscrimination in Employment (Title VII of the 1964 Civil Rights Act). During the performance of this contract, Contractor agrees as follows:

a. Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this nondiscrimination clause.

b. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex or national origin.

4. Information and Reports. Contractor will provide all information and reports required by the Regulations or orders and instructions issued pursuant thereto, and will permit access to his books, records, accounts, other sources of information, and his facilities as may be determined by Department or FHWA as appropriate, and shall set forth what efforts he has made to obtain the information.

5. Sanctions for Noncompliance. In the event of Contractor's noncompliance with the nondiscrimination provisions of the contract, Department shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

a. Withholding of payments to Contractor under the agreement until Contractor complies; and/or

b. Cancellation, termination or suspension of the agreement in whole or in part.

6. Incorporation of Provisions. Contractor will include the provisions of paragraphs 1 through 6 of this section in every subcontract, including procurement of materials and leases of equipment, unless exempt from Regulations, orders or instructions issued pursuant thereto. Contractor shall take such action with respect to any subcontractor or procurement as Department or FHWA may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event Contractor becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of such direction, Department may, at its option, enter into such litigation to protect the interests of Department, and, in addition, Contractor may request Department to enter into such litigation to protect the interests of the State of Oregon.

VI. DISADVANTAGED BUSINESS ENTERPRISE (DBE) POLICY

In accordance with Title 49, Code of Federal Regulations, Part 26, Contractor shall agree to abide by and take all necessary and reasonable steps to comply with the following statement:

DBE POLICY STATEMENT

DBE Policy. It is the policy of the United States Department of Transportation (USDOT) to practice nondiscrimination on the basis of race, color, sex and/or national origin in the award and administration of USDOT assist contracts. Consequently, the DBE requirements of 49 CFR 26 apply to this contract.

Required Statement For USDOT Financial Assistance Agreement. If as a condition of assistance the Agency has submitted and the US Department of Transportation has approved a Disadvantaged Business Enterprise Affirmative Action Program which the Agency agrees to carry out, this affirmative action program is incorporated into the financial assistance agreement by reference.

DBE Obligations. The Oregon Department of Transportation (ODOT) and its contractor agree to ensure that Disadvantaged Business Enterprises as defined in 49 CFR 26 have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds. In this regard, Contractor shall take all necessary and reasonable steps in accordance with 49 CFR 26 to ensure that Disadvantaged Business Enterprises have the opportunity to compete for and perform contracts. Neither ODOT nor its contractors shall discriminate on the basis of race, color, national origin or sex in the award and performance of federally-assisted contracts. The contractor shall carry

out applicable requirements of 49 CFR Part 26 in the award and administration of such contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as ODOT deems appropriate.

The DBE Policy Statement and Obligations shall be included in all subcontracts entered into under this contract.

Records and Reports. Contractor shall provide monthly documentation to Department that it is subcontracting with or purchasing materials from the DBEs identified to meet contract goals. Contractor shall notify Department and obtain its written approval before replacing a DBE or making any change in the DBE participation listed. If a DBE is unable to fulfill the original obligation to the contract, Contractor must demonstrate to Department the Affirmative Action steps taken to replace the DBE with another DBE. Failure to do so will result in withholding payment on those items. The monthly documentation will not be required after the DBE goal commitment is satisfactory to Department.

Any DBE participation attained after the DBE goal has been satisfied should be reported to the Departments.

DBE Definition. Only firms DBE certified by the State of Oregon, Department of Consumer & Business Services, Office of Minority, Women & Emerging Small Business, may be utilized to satisfy this obligation.

CONTRACTOR'S DBE CONTRACT GOAL

DBE GOAL ___0___ %

By signing this contract, Contractor assures that good faith efforts have been made to meet the goal for the DBE participation specified in the Request for Proposal/Qualification for this project as required by ORS 200.045, and 49 CFR 26.53 and 49 CFR, Part 26, Appendix A.

VII. LOBBYING

The Contractor certifies, by signing this agreement to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

The Contractor also agrees by signing this agreement that he or she shall require that the language of this certification be included in all lower tier subagreements, which exceed $100,000 and that all such subrecipients shall certify and disclose accordingly.

FOR INQUIRY CONCERNING ODOT'S DBE PROGRAM REQUIREMENT CONTACT OFFICE OF CIVIL RIGHTS AT (503)986-4354.

ATTACHMENT B

RESOLUTION NO. ___

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON DECLARING THE NEED TO ACQUIRE PROPERTY FOR RIGHT-OF-WAY

WHEREAS, the City of Milwaukie has the authority under Charter Section 6 and ORS 223.005 to acquire real property by condemnation; and

WHEREAS, Article I, Section 18 of the Oregon Constitution provides that development of roads is necessary for the development of the state and a public use; and

WHEREAS, McLoughlin Boulevard, which lies partially within the City of Milwaukie and partially within other jurisdictions, is in need of improvements to adequately serve the traffic it currently carries and is expected to carry in the future; and

WHEREAS, the required improvements for McLoughlin Boulevard will require additional right-of-way to be acquired as shown in the attached Exhibit 1; and

WHEREAS, the City of Milwaukie has retained the Oregon Department of Transportation to serve as the right-of-way agent for the City of Milwaukie in connection with the McLoughlin Boulevard Improvements Project;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MILWAUKIE THAT:

SECTION 1: The acquisition as right-of-way of the properties listed in the attached Exhibit 1 are needed for the improvement of McLoughlin Boulevard. It is also necessary to enter upon the remaining lands of the owners contiguous to any buildings or improvements which are bisected by the acquisition for the purpose of moving, dismantling or otherwise disposing of the buildings or improvements, and to enter upon the remaining lands of the owners for the construction of road approaches or other land service facilities being constructed for the use and benefit of the property.

SECTION 2: The McLoughlin Boulevard Improvements Project for which property is being acquired is necessary and in the public interest, and the project has been planned, designed, located, and will be constructed in a manner which will be most compatible with the greatest public good and the least private injury or damage.

SECTION 3: The City of Milwaukie directs those serving as its right-of-way agents to attempt to agree with the respective owners and other persons in interest as to the compensation to be paid for the acquisition of each property, and in the event that no satisfactory agreement can be reached, then the right-of-way agent is directed and authorized to use legal counsel to commence and prosecute to final determination such proceedings as may be necessary to acquire title to the acquisitions declared herein to be needed and required.

SECTION 4: Upon the trial of any suit or action instituted under the provisions of Section 3 above, the right-of-way agent's legal counsel, after consultation with City staff, is authorized to make any stipulation, agreement or admission that in the counsel's judgment may be for the best interests of the project and the City of Milwaukie.

SECTION 5: This resolution shall be effective immediately upon passage.

Introduced and adopted by the City Council of the City of Milwaukie, Oregon, on _____, 2003.

_____
James Bernard, Mayor

ATTEST:

_____
Pat DuVal, City Recorder

APPROVED AS TO FORM

_____
Ramis, Crew, Corrigan & Bachrach, LLP

EXHIBIT 1

Property Owner	Property Address	Tax Lot Number
Olson Brothers Enterprises (Texaco)	10700 SE McLoughlin Blvd.	11E35AA01000
City of Milwaukie	10808 SE McLoughlin Blvd.	11E35AA01100
Way Chan (ABC Kitchen)	10880 SE McLoughlin Blvd.	11E35AA01200
Raul Ponce and William Roberts	1906 SE Monroe Street	11E35AA02100
Atlantic Richfield Company	10966 SE McLoughlin Blvd.	11E35AA01900
Universe Corporation (Astro)	11010 SE McLoughlin Blvd.	11E35AD00800
Pacific One Bank	11050 SE McLoughlin Blvd.	11E35AD00700
Glen and Doris Smith (Cash Spot)	10966 SE McLoughlin Blvd.	11E35AD01100
Metro		11E35AD00900
City of Milwaukie	10993 SE McLoughlin Blvd.	11E35AA02200
City of Milwaukie	10937 SE McLoughlin Blvd.	11E35AA02300
WMB Investment Co. (Vic's Tavern)	10901 SE McLoughlin Blvd.	11E35AA02400
City of Milwaukie	10877 SE McLoughlin Blvd.	11E35AA02500
David McMillan (Antique Mall)	10875 SE McLoughlin Blvd.	11E35AA02600
City of Milwaukie	10799 SE McLoughlin Blvd.	11E35AA02700
City of Milwaukie	10799 SE McLoughlin Blvd.	11E35AA02800
City of Milwaukie	10707 SE McLoughlin Blvd.	11E35AA05000

CITY OF MILWAUKIE

Ledding Library Board August minutes

August 25, 2003; 6:30 PM
Ledding Library

Meeting called by:	Tom Hogan
Attendees:	Attendees: Mark Docken, Pat Healy, Tom Hogan, Sue Trotter, Michael Welling Absent : Ed Zumwalt Staff: Cynthia Sturgis

Agenda topics

Approval of minutes

Approved with the following addition: In the"Facility Planning" section, add "The Board reviewed the drafts of the foundation by-laws and mission statement. Discussion of these documents will be on the August agenda."

Librarian's report

The Friends have agreed to pay for thin client workstations to be used as PACs. The hardware has been ordered and may be installed in September.

The summer reading program has been a great success this year. One thousand children and teens signed up.

The PLC and LNIB continue to discuss variations for a new formula to distribute funds to member libraries. Some additions to the circulation/population served may be eliminating renewals and raising the amount of circulation for ratcheting. Joanna Rood will have some spreadsheets available at the September LNIB meeting showing the effects on library distribution. That meeting is scheduled for Thursday, September 11 at 1:30 at the network office.

After reviewing the July statistics, Mark Docken suggested that the number of days open be replaced with the number of hours open weekly. With the cutback in hours in July, the library is now experiencing a reduction in circulation. The change in hours is part of that problem, as well as the change in circulation period for videos and dvds.

Patriot Act procedures and privacy policy

After much discussion, the Board voted to recommend to the City Council the adaption of the policy with an addition to Section 4 Procedures for Handling Requests for Library Records. The request should be sent to the City Manager who will decide whether to forward it to the City Attorney for review.

September 22 meeting

Joanna Rood has agreed to speak at the September meeting, and the Public Safety Building meeting room has been booked. Chair. Tom Hogan will write a letter to members of the City Council inviting them to the meeting for a discussion of the state of public libraries in Clackamas County. A variation of the letter will also be distributed to Neighborhood Association Chairs., the Pilot, the library newsletter, the Facility Planning group, local schools, and community service groups.

Facility planning

Architect Rob Dortignacq meet with library staff, Pat Healy, Michael Welling, and Kelly Somers from Public Works to set priorities for the floor design of the expanded building plans. Discussion will continue at a meeting on September 11.

The Board discussed the drafts of the foundation by-laws and mission statement and recommended that the documents be sent to the City Manager and Attorney for review.

The Faciilty Planning Committee will be visiting Neighborhood Associations to report on the progress of the cost estimate plan from Rob Dortignacq. They are working on a short presentation and handouts. Michael Welling has agreed to design and print the flyers. Molly Hanthorn brought a newspaper ad from the Tillamook Library the committee decided to use as a guide for the flyers. Joe and Cynthia will edit it and send to Michael.

Riverfront Board Minutes 6/16/03

Members present: Green, Verbout, Klein, Martin, Stacey, Wall

Absent: Loaiza

Visitors: Jeff King, Program Services Coordinator – City of Milwaukie

Minutes approves as written – 5-0 (Wall not present)

Peake Development Update

Jeff King described the selection process used to select Peake Development as the developer for the old Safeway site. The final selection was made from four qualified firms. He noted that the selection team used a set of 10 goals for the project to guide their selection. The City has hired an architecture firm (Myhers Group) to assist with the design phase of this project. He said Peak Development would be both the contractor for the project as well as the property management firm.

The project would include retail and commercial space on the lower level, rental apartments on the 2nd and 3rd floors and condos on the fourth floor. Jeff said that there would be a design charrette in August. He expected the proposed project to the Planning Commission in December or January. He expects to begin construction in March of 2004. The apartments in the project would go for about $550-700/month. And the condos would be in the $90-100,000 range.

Regarding access to the development, Jeff said that there would be no vehicle access to the building from Main street – but pedestrian access would be included. Vehicle access would be from 21st only but 21st would not become a through street due to restrictions placed on Scott Park and the Library property. The project would include about 166 parking spaces.

Members made the following comments:

- It would be nice if it was not just a box type construction. It should reflect the City's existing architecture
- It needs more open space or at least a path that goes around it.
- It would be great if this development were connected in some way to the trails and open spaces that surround it. (Spring Creek and the pond in back of the Library, Trolley Trail on riverfront, and the Three Bridges project north of the Industrial area)

- The Downtown plan, as visualized by Crandall and Arambula, had an anchor near the north end of town and other smaller retail throughout the town. If small retail is going to be in this new development where will the anchor be?
- The rendering looks kind of like a "gothic resort"....
- The proposed architecture doesn't seem very "homey"
- Can they have windows that open so it doesn't look so "commercial"?
- Any hope of integrating a water feature - like running the creek through it?
- Make this project "part of the city" rather than a stand alone, selfish project
- What is the square footage of the condos - Gary Klein warns that condos of too small a size can be hard to finance
- Verbout was concerned that the proposed project is very different from what was envisioned in the downtown plan
- Dave asked how we could try to connect this development with the Riverfront?

Jeff said that more work on the design would take place in July, August and September and that he would keep the group apprised of opportunities to provide input.

Riverfront Flier

Herrigel asked the board to review a draft of a riverfront flier she planned to use for the Centennial Festival. The group suggested she print the flier on heavier paper.

Other

The group agreed that they would like to have a presentation on the Trolley Trail at their next meeting.

The next meeting was set for August 4 at 6 pm.

A motion to adjourn was approved 6-0.